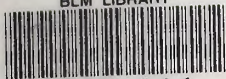


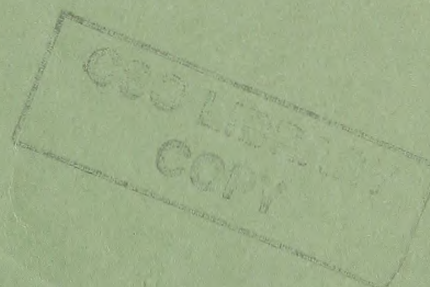
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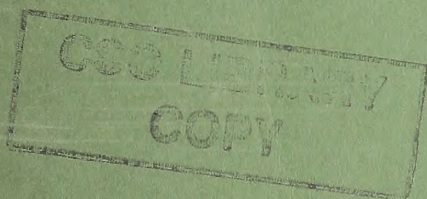
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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- James G. Watt

Office of Hearings and Appeals -- Donald R. Tindal, Director

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JANUARY-DECEMBER 1983

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TABLE OF CONTENTS

	<u>Page</u>
Topical Index to Decisions & Opinions -----	III
Case Symbols Used in Decisions, Opinions	
Tables and Editor's Note -----	XVIII
Table of Decisions Reported -----	XIX
Table of Opinions Reported -----	XLII
Table of Overruled & Modified Cases -----	XLIII
Table of Suits for Judicial Review of	
Published & Unpublished Decisions -----	LI
Cumulative Index to Suits for Judicial	
Review of Departmental Decisions -----	LXVII
Table of Statutes Cited:	
(A) United States Statutes (Acts of Congress) -----	CXIX
(B) Revised Statutes -----	CXXII
(C) United States Codes -----	CXXIII
Index-Digest -----	1

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TOPICAL INDEX TO DECISIONS AND OPINIONS
OF THE DEPARTMENT OF THE INTERIOR

	<u>Page(s)</u>
ACCOUNTS -----	1-2
(See also Fees, Funds, Payments--if included in this Index.)	
GENERALLY -----	1
PAYMENTS -----	1
REFUNDS -----	1-2
ACCRETION -----	2
(See also Boundaries, Public Lands--if included in this Index.)	
ACT OF JULY 26, 1866 -----	2
ACT OF JULY 27, 1866 -----	2
ACT OF MAY 17, 1884 -----	2
ACT OF FEBRUARY 8, 1887 -----	2
ACT OF AUGUST 4, 1892 -----	2
ACT OF MAY 17, 1906 -----	2
ACT OF JUNE 25, 1910 -----	2-3
ACT OF APRIL 28, 1930 -----	3
ACT OF APRIL 29, 1950 -----	3
ACT OF AUGUST 11, 1955 -----	3
ACT OF JULY 6, 1960 -----	3-4
ACT OF OCTOBER 15, 1966 -----	4
ACT OF OCTOBER 1, 1968 -----	4
ADMINISTRATIVE AUTHORITY -----	4-5
(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)	
GENERALLY -----	4
ESTOPPEL -----	5
LACHES -----	5
ADMINISTRATIVE PRACTICE -----	5-6
ADMINISTRATIVE PROCEDURE -----	6-13
(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)	
GENERALLY -----	6-7
ADJUDICATION -----	7-8
ADMINISTRATIVE LAW JUDGES -----	8
ADMINISTRATIVE PROCEDURE ACT -----	8
ADMINISTRATIVE REVIEW -----	8-9
BURDEN OF PROOF -----	10-11
DECISIONS -----	11
HEARINGS -----	11-13
RULEMAKING -----	13
SUBSTANTIAL EVIDENCE -----	13
AGENCY -----	13
ALASKA -----	13-17
GENERALLY -----	13-14
ALASKA NATIVE CLAIMS SETTLEMENT ACT -----	14
COAL LEASES AND PERMITS -----	14

ALASKA -- Continued

GRAZING -----	14
LAND GRANTS AND SELECTIONS -----	14
Generally -----	14
MINING CLAIMS -----	14
NATIVE ALLOTMENTS -----	14-15
NAVIGABLE WATERS -----	15-16
Generally -----	15-16
OIL AND GAS LEASES -----	16
POSSESSORY RIGHTS -----	16
SHORE SPACE RESERVES AND RESTRICTIONS -----	16
STATEHOOD ACT -----	16
TOWNSITES -----	16
TRADE AND MANUFACTURING SITES -----	16-17
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT -----	17
GENERALLY -----	17
OIL AND GAS LEASES -----	17
Favorable Petroleum Geological Provinces -----	17
ALASKA NATIVE CLAIMS SETTLEMENT ACT -----	17-22
GENERALLY -----	17-18
ABORIGINAL CLAIMS -----	18
ADMINISTRATIVE PROCEDURE -----	18
Generally -----	18
APPEALS -----	18
Generally -----	18
Jurisdiction -----	18
Standing -----	18
CONVEYANCES -----	18-20
Generally -----	18-19
Cemetery Sites and Historical Places -----	19
Easements -----	19
Interim Conveyance -----	19
Native Groups -----	19
Reconveyances -----	19
Regional Conveyances -----	19
Valid Existing Rights -----	20
Generally -----	20
Village Conveyances -----	20
DEFINITIONS -----	20
Generally -----	20
EASEMENTS -----	20-21
Generally -----	20
Access -----	20-21
Decision to Reserve -----	21
Present Existing Use -----	21
Public Easements -----	21
Review -----	21
NATIVE LAND SELECTIONS -----	21-22
Regional Selections -----	21-22
Generally -----	21-22
State-Selected Lands -----	22
Village Selections -----	22

ALASKA NATIVE CLAIM SETTLEMENT ACT -- Continued

NAVIGABLE WATERS -----	22
WITHDRAWALS AND RESERVATIONS -----	22
Generally -----	22
APPEALS -----	22-24
(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)	
APPLICATIONS AND ENTRIES -----	25-26
GENERALLY -----	25
AMENDMENTS -----	26
FILING -----	26
PRIORITY -----	26
VESTED RIGHTS -----	26
APPRAISALS -----	26-27
ASPHALT AND BITUMEN LEASES -----	28
ATTORNEY'S FEES -----	28
GENERALLY -----	28
EQUAL ACCESS TO JUSTICE ACT -----	28
BOARD OF INDIAN APPEALS -----	28-29
JURISDICTION -----	28-29
BOARD OF LAND APPEALS -----	29
BUREAU OF INDIAN AFFAIRS -----	29-30
(See also Indian Probate--if included in this Index.)	
GENERALLY -----	29
ADMINISTRATIVE APPEALS -----	29-30
Generally -----	29-30
BUREAU OF LAND MANAGEMENT -----	30
(See also Mineral Leasing Act--if included in this Index.)	
BUREAU OF RECLAMATION -----	30
(See also Irrigation Claims--if included in this Index.)	
GENERALLY -----	30
ENVIRONMENT -----	30
COAL LEASES AND PERMITS -----	30-32
(See also Mineral Leasing Act--if included in this Index.)	
GENERALLY -----	30
APPLICATIONS -----	30
LEASES -----	30-32
READJUSTMENT -----	32
ROYALTIES -----	32
COLOR OR CLAIM OF TITLE -----	33-34
GENERALLY -----	33
ADVERSE POSSESSION -----	33
APPLICATIONS -----	33-34
APPRAISED VALUE -----	34
CULTIVATION -----	34
GOOD FAITH -----	34
IMPROVEMENTS -----	34
PRIVITY -----	34
COMMUNICATION SITES -----	34-35

	<u>Page(s)</u>
CONSTITUTIONAL LAW -----	35-36
GENERALLY -----	35
DUE PROCESS -----	35-36
CONTESTS AND PROTESTS -----	36
(See also Administrative Procedure, Rules of Practice-- if included in this Index.)	
GENERALLY -----	36
CONTRACTS -----	36-50
(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)	
GENERALLY -----	36-37
CONSTRUCTION AND OPERATION -----	37-42
Generally -----	36-37
Actions of Parties -----	37
Allowable Costs -----	37
Changed Conditions (Differing Site Conditions) -----	37-38
Changes and Extras -----	38
Conflicting Clauses -----	38
Construction Against Drafter -----	38-39
Contract Clauses -----	39
Contracting Officer -----	39-40
Differing Site Conditions (Changed Conditions) -----	40
Drawings and Specifications -----	40-41
Duration of Contract -----	41
Estimated Quantities -----	41
General Rules of Construction -----	41-42
Intent of Parties -----	42
Notices -----	42
Waiver and Estoppel -----	42
CONTRACT DISPUTES ACT OF 1978 -----	42-44
Generally -----	42-43
Interest -----	43
Jurisdiction -----	43-44
DISPUTES AND REMEDIES -----	44-48
Burden of Proof -----	44-45
Damages -----	45
Liquidated Damages -----	45
Equitable Adjustments -----	45-46
Extraordinary Remedies -----	46
Jurisdiction -----	46-47
Substantial Evidence -----	47
Termination for Convenience -----	47
Termination for Default -----	47-48
Generally -----	47-48
Excess Costs -----	48
FEDERAL PROCUREMENT REGULATIONS -----	48
FORMATION AND VALIDITY -----	48-49
Authority to Make -----	48-49
Legality -----	49
Mistakes -----	49

Topical Index

Page(s)

CONTRACTS -- Continued	
PERFORMANCE OR DEFAULT -----	49-50
Generally -----	49
Compensable Delays -----	49
Excusable Delays -----	49
Impossibility of Performance -----	50
Inspection -----	50
Release and Settlement -----	50
Suspension of Work -----	50
CONVEYANCES -----	50-51
GENERALLY -----	50-51
DELEGATION OF AUTHORITY -----	51
(See also Administrative Authority, Contracts--if included in this Index.)	
REDELEGATIONS -----	51
DESERT LAND ENTRY -----	51-52
GENERALLY -----	51
APPLICATIONS -----	51
CLASSIFICATION -----	51
CULTIVATION AND RECLAMATION -----	51
LANDS SUBJECT TO -----	51-52
WATER RIGHT -----	52
ENDANGERED SPECIES ACT OF 1973 -----	52
SECTION 7 -----	52
Consultation -----	52
ENVIRONMENTAL POLICY ACT -----	52
(See also National Environmental Policy Act of 1969--if included in this Index.)	
ENVIRONMENTAL QUALITY -----	52-53
(See also Water Pollution Control--if included in this Index.)	
GENERALLY -----	52-53
ENVIRONMENTAL STATEMENTS -----	53
EQUAL ACCESS TO JUSTICE ACT -----	53
ADVERSARY ADJUDICATION -----	53
APPLICATION -----	53
AWARDS -----	53
EQUITABLE ADJUDICATION -----	53-54
GENERALLY -----	53-54
ESTOPPEL -----	54-55
EVIDENCE -----	55-61
GENERALLY -----	55-56
ADMISSIBILITY -----	56
BURDEN OF PROOF -----	56-57
CREDIBILITY -----	57
HEARSAY -----	57
PREPONDERANCE -----	57
PRESUMPTIONS -----	58-59
PRIMA FACIE CASE -----	59
SUFFICIENCY -----	59-61
WEIGHT -----	61

EXCHANGES OF LAND -----	61
(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects--if included in this Index.)	
GENERALLY -----	61
EXECUTIVE ORDERS AND PROCLAMATIONS -----	62
FEDERAL EMPLOYEES AND OFFICERS -----	62-63
(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)	
GENERALLY -----	62-63
AUTHORITY TO BIND GOVERNMENT -----	63
INTEREST IN LANDS -----	63
FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 -----	63-84
(See also Hearings--if included in this Index.)	
GENERALLY -----	63-64
ASSESSMENT WORK -----	64
CONVEYANCES -----	64
DISCLAIMERS OF INTEREST -----	64
EXCHANGES -----	64
INVENTORY AND IDENTIFICATION -----	64-65
LAND USE PLANNING -----	65
LEASES -----	65
PERMITS -----	65-66
PLAN OF OPERATIONS -----	66
PUBLIC PARTICIPATION -----	66
RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM -----	66-76
RECORDATION OF MINING CLAIMS AND ABANDONMENT -----	76-79
REPEALERS -----	79
RESERVATION AND CONVEYANCE OF MINERAL INTERESTS -----	79
RIGHTS-OF-WAY -----	79-80
SALES -----	80
SURFACE MANAGEMENT -----	80
WILDERNESS -----	80-84
FEES -----	84
(See also Accounts--if included in this Index.)	
FISH AND WILDLIFE COORDINATION ACT -----	84
FISH AND WILDLIFE SERVICE -----	84
FREEDOM OF INFORMATION ACT (Act of June 5, 1967) -----	84
GEOHERMAL LEASES -----	84-85
(See also Hearings, Mineral Leasing Act--if included in this Index.)	
ACREAGE LIMITATIONS -----	84
APPLICATIONS -----	85
Generally -----	85
Amendments -----	85
Description -----	85
COMPETITIVE LEASES -----	85
CONSENT OF AGENCY -----	85
DESCRIPTION OF LAND -----	85
DISCRETION TO LEASE -----	85
LANDS SUBJECT TO -----	85
GEOHERMAL RESOURCES -----	85
GRAZING AND GRAZING LANDS -----	86

GRAZING PERMITS AND LICENSES -----	86-87
(See also Appeals, Hearings, Taylor Grazing Act--if included in this Index.)	
GENERALLY -----	86
ADJUDICATION -----	86
APPEALS -----	86
APPORTIONMENT OF FEDERAL RANGE -----	86
BASE PROPERTY (LAND) -----	86-87
Ownership or Control -----	86-87
CANCELLATION OR REDUCTION -----	87
EXCHANGE OF USE -----	87
HEARINGS -----	87
RANGE SURVEYS -----	87
HEARINGS -----	87-89
(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)	
HOMESTEADS (ORDINARY) -----	89
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)	
CONTESTS -----	89
INDIAN ALLOTMENTS ON PUBLIC DOMAIN -----	89-90
GENERALLY -----	89
CLASSIFICATION -----	89
LANDS SUBJECT TO -----	89-90
INDIAN CHILD WELFARE ACT OF 1978 -----	90-91
FINANCIAL GRANT APPLICATIONS -----	90
Generally -----	90
Disapproval -----	90-91
Funding -----	91
INDIAN LANDS -----	91-94
(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)	
ACQUIRED LANDS -----	91
CONTRACTS -----	91
Generally -----	91
FORESTRY -----	91-92
Timber Sales Contract -----	91-92
Generally -----	91-92
Breach and Damages -----	92
LEASES AND PERMITS -----	92-93
Generally -----	92
Arbitration -----	92
Minerals -----	92-93
Revocation or Cancellation -----	93
Secretarial Approval -----	93
MINING LEASES -----	93-94
Generally -----	93-94
Royalties -----	94

Topical Index

Page(s)

INDIAN LANDS -- Continued

PATENT IN FEE -----94

Jurisdiction -----94

RESTRICTED ALLOTMENT -----94

RIGHTS-OF-WAY -----94

INDIAN PROBATE -----94-97

(See also Appeals, Bureau of Indian Affairs, Hearings,
Indian Lands, Indian Tribes, Rules of Practice--if included
in this Index.)

ADOPTION (See also CHILDREN, ADOPTED--if included in
this Index.) -----94

Generally -----94

APPEAL (See also PLEADING, RECONSIDERATION--if included
in this Index.) -----94

Matters Considered on Appeal -----94

Standing to Appeal -----94

CHILDREN, ADOPTED (See also ADOPTION, INHERITING--if
included in this Index.) -----94

Right to Inherit -----94

Generally -----94

CHILDREN, ILLEGITIMATE (See also INHERITING--if included
in this Index.) -----95

Generally -----95

Right to Inherit -----95

Child from Father -----95

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION
ON ACTIONS, STATUTES OF LIMITATION--if included in
this Index.) -----95

Source of Funds for Payment -----95

COMPROMISE SETTLEMENTS -----95

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT -----95

DIVORCE (See also CLAIM AGAINST ESTATE--if included in
this Index.) -----95

Generally -----95

EVIDENCE -----95

Insufficiency of -----95

Proof of Marriage -----95

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--
if included in this Index.) -----95

Generally -----95

Notice -----95

INHERITING (See also CHILDREN, ADOPTED; CHILDREN,
ILLEGITIMATE; WILLS--if included in this Index.) -----96

Generally -----96

Non-Indian -----96

MARRIAGE -----96

Generally -----96

Common Law -----96

NON-RESTRICTED PROPERTY -----96

REHEARING (See also ADMINISTRATIVE PROCEDURE, HEARING--
if included in this Index.) -----96

Generally -----96

Topical Index

Page(s)

INDIAN PROBATE -- Continued

REOPENING -----	96-97
Generally -----	96
Standing to Petition for Reopening -----	96-97
SECRETARY'S AUTHORITY -----	97
Generally -----	97
STATE LAW -----	97
Generally -----	97
WILLS (See also CONTRACT TO MAKE WILL, INHERITING--	
if included in this Index.) -----	97
Disapproval of Will -----	97
Holographic Will -----	97
Revocation -----	97
Testamentary Capacity -----	97
Generally -----	97
Undue Influence -----	97

INDIAN TRIBES

(See also Appeals, Indian Probate--if included in this Index.) -----	98
TREATIES -----	98

INDIANS

GENERALY -----	98
ADOPTION -----	98
EDUCATION -----	98
FISCAL AND FINANCIAL AFFAIRS -----	98
WELFARE -----	98

LACHES

-----	99
-------	----

LIEU SELECTIONS

-----	99
-------	----

MILLSITES

-----	99-100
-------	--------

(See also Mining Claims--if included in this Index.)

GENERALY -----	99-100
DETERMINATION OF VALIDITY -----	100
MINERAL LANDS -----	100-101
GENERALY -----	100
DETERMINATION OF CHARACTER OF -----	100
LEASES -----	100
MINERAL RESERVATION -----	100
NONMINERAL ENTRIES -----	101
PROSPECTING PERMITS -----	101

MINERAL LEASING ACT

-----	102-105
-------	---------

(See also Bureau of Land Management, Coal Leases & Permits,
Geothermal Leases, Oil & Gas Leases, Phosphate Leases &
Permits, Potassium Leases & Permits, Sodium Leases &
Permits--if included in this Index.)

GENERALY -----	102-103
COMBINED HYDROCARBON LEASES -----	103-104
CONSENT OF AGENCY -----	104
ENVIRONMENT -----	104
LANDS SUBJECT TO -----	104-105

MINERAL LEASING ACT FOR ACQUIRED LANDS

-----	105
GENERALY -----	105
CONSENT OF AGENCY -----	105
LANDS SUBJECT TO -----	105

	<u>Page(s)</u>
MINING CLAIMS -----	105-138
(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)	
GENERALLY -----	105-107
ABANDONMENT -----	107-113
ASSESSMENT WORK -----	113-114
COMMON VARIETIES OF MINERALS -----	114
Generally -----	114
CONTESTS -----	114-116
DETERMINATION OF VALIDITY -----	116-120
DISCOVERY -----	120-122
Generally -----	120-122
Geologic Inference -----	122
Marketability -----	122
HEARINGS -----	122-123
LANDS SUBJECT TO -----	123-125
LOCATION -----	125-126
LODE CLAIMS -----	126
MARKETABILITY -----	126
MILLSITES -----	126
MINERAL LANDS -----	126
PATENT -----	126-127
PLACER CLAIMS -----	127
POWERSITE LANDS -----	127-128
RECORDATION -----	128-134
RELOCATION -----	134-135
SURFACE USES -----	135
TITLE -----	135
TUNNEL SITES -----	135
WITHDRAWN LAND -----	135-138
MINING CLAIMS RIGHTS RESTORATION ACT -----	138
MINING OCCUPANCY ACT -----	138
PRINCIPAL PLACE OF RESIDENCE -----	138
MISTAKES -----	138
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 -----	139
(See also Environmental Policy Act--if included in this Index.)	
ENVIRONMENTAL STATEMENTS -----	139
NATIONAL PARK SERVICE AREAS -----	139
GENERALLY -----	139
NAVIGABLE WATERS -----	139
NOTICE -----	139-141
GENERALLY -----	139-141
OFFICERS AND EMPLOYEES -----	141
(See also Federal Employees & Officers--if included in this Index.)	
OIL AND GAS LEASES -----	141-200
(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)	
GENERALLY -----	141-142
ACQUIRED LANDS LEASES -----	142-144
ACREAGE LIMITATIONS -----	144

Topical Index

Page(s)

OIL AND GAS LEASES -- Continued

APPLICATIONS -----	144-166
Generally -----	144-151
Amendments -----	151
Attorneys-in-Fact or Agents -----	151-153
Description -----	153-154
Drawings -----	154-159
Filing -----	159-164
Legibility -----	164-165
Reinstatement -----	165
640-acre Limitation -----	165
Sole Party in Interest -----	165-166
ASSIGNMENTS OR TRANSFERS -----	166
BONA FIDE PURCHASER -----	166-167
CANCELLATION -----	167-168
COMMUNITIZATION AGREEMENTS -----	168
COMPETITIVE LEASES -----	168-171
CONSENT OF AGENCY -----	171
DESCRIPTION OF LAND -----	171-172
DISCRETION TO LEASE -----	172-175
DRILLING -----	175
EXTENSIONS -----	175-176
FAVORABLE PETROLEUM GEOLOGICAL PROVINCES -----	176
FIRST-QUALIFIED APPLICANT -----	176-179
FUTURE AND FRACTIONAL INTEREST LEASES -----	179
KNOWN GEOLOGIC STRUCTURE -----	180
LANDS SUBJECT TO -----	181-184
NONCOMPETITIVE LEASES -----	184-186
OPERATING AGREEMENTS -----	186
PATENTED OR ENTERED LANDS -----	186
REINSTATEMENT -----	187-190
RELINQUISHMENTS -----	190
RENEWALS -----	190
RENTALS -----	190-194
ROYALTIES -----	194
STIPULATIONS -----	194-196
SUSPENSIONS -----	196
TERMINATION -----	196-200
TWENTY-YEAR LEASES -----	200
UNIT AND COOPERATIVE AGREEMENTS -----	200
WELL CAPABLE OF PRODUCTION -----	200
OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS	
BAY GRANT LANDS -----	200-201
GENERALLY -----	200
MINING CLAIMS -----	200
TIMBER SALES -----	200-201
OUTER CONTINENTAL SHELF LANDS ACT -----	201
(See also Oil & Gas Leases--if included in this Index.)	
OIL AND GAS LEASES -----	201
PATENTS OF PUBLIC LANDS -----	201-202
GENERALLY -----	201
EFFECT -----	201
RESERVATIONS -----	202

	<u>Page(s)</u>
PAYMENTS -----	202
(See also Accounts--if included in this Index.)	
GENERALLY -----	202
REFUNDS -----	202
PHOSPHATE LEASES AND PERMITS -----	202
(See also Mineral Leasing Act--if included in this Index.)	
LEASES -----	202
PERMITS -----	202
POTASSIUM LEASES AND PERMITS -----	202
(See also Mineral Leasing Act--if included in this Index.)	
LEASES -----	202
POWERSITE LANDS -----	203
PRACTICE BEFORE THE DEPARTMENT -----	203
(See also Rules of Practice--if included in this Index.)	
PERSONS QUALIFIED TO PRACTICE -----	203
PRESIDENT OF THE UNITED STATES -----	203
PUBLIC LANDS -----	203-204
(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)	
GENERALLY -----	203
ADMINISTRATION -----	203
CLASSIFICATION -----	204
LEASES AND PERMITS -----	204
SPECIAL USE PERMITS -----	204
PUBLIC RECORDS -----	204
(See also Administrative Procedure, Confidential Information--if included in this Index.)	
RAILROAD GRANT LANDS -----	204-205
RECREATION AND PUBLIC PURPOSES ACT -----	205
REGULATIONS -----	205-208
(See also Administrative Procedure--if included in this Index.)	
GENERALLY -----	205-206
APPLICABILITY -----	206
BINDING ON THE SECRETARY -----	206
FORCE AND EFFECT AS LAW -----	207
INTERPRETATION -----	207
PUBLICATION -----	207-208
VALIDITY -----	208
RENT -----	208-209
RES JUDICATA -----	209
RIGHTS-OF-WAY -----	209-213
(See also Indian Lands, Reclamation Lands--if included in this Index.)	
GENERALLY -----	209-210
ACT OF FEBRUARY 15, 1901 -----	210
ACT OF FEBRUARY 1, 1905 -----	210
ACT OF MARCH 4, 1911 -----	210
ACT OF FEBRUARY 25, 1920 -----	210-211
APPLICATIONS -----	211
APPRAISALS -----	211

Topical Index

Page(s)

RIGHTS-OF-WAY -- Continued

CANCELLATION -----	211
CONDITIONS AND LIMITATIONS -----	211
FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 -----	212
NATURE OF DECISION -----	212
OIL AND GAS PIPELINES -----	213
RULES OF PRACTICE -----	213-224
(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)	
GENERALLY -----	213-214
APPEALS -----	214-221
Generally -----	214
Burden of Proof -----	215
Dismissal -----	215-217
Effect of -----	217
Failure to Appeal -----	217
Hearings -----	218
Motions -----	218
Notice of Appeal -----	218
Reconsideration -----	219
Service on Adverse Party -----	219
Standing to Appeal -----	219-220
Statement of Reasons -----	220
Timely Filing -----	220-221
EVIDENCE -----	221-222
GOVERNMENT CONTESTS -----	222
HEARINGS -----	222-223
PRIVATE CONTESTS -----	223-224
PROTESTS -----	224
SUPERVISORY AUTHORITY OF THE SECRETARY -----	224
SECRETARY OF THE INTERIOR -----	224-225
(See also Administrative Authority--if included in this Index.)	
SEGREGATION -----	225-226
SMALL TRACT ACT -----	226
GENERALLY -----	226
APPLICATIONS -----	226
APPRAISALS -----	226
CLASSIFICATION -----	226
SODIUM LEASES AND PERMITS -----	226-227
(See also Mineral Leasing Act--if included in this Index.)	
LEASES -----	226-227
PERMITS -----	227
SPECIAL USE PERMITS -----	227
STATE COURTS -----	227
STATE EXCHANGES -----	227
(See also Exchanges of Land--if included in this Index.)	
GENERALLY -----	227
STATE GRANTS -----	227
STATE LAWS -----	227-228
STATE SELECTIONS -----	228
(See also School Lands, Swamplands--if included in this Index.)	

Topical Index

	<u>Page(s)</u>
STATUTES -----	228
STATUTORY CONSTRUCTION -----	228-229
GENERALLY -----	228
INDIANS -----	229
LEGISLATIVE HISTORY -----	229
STOCK-RAISING HOMESTEADS -----	229
(See also Homesteads (Ordinary)--if included in this Index.)	
SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 -----	229-233
ADMINISTRATIVE PROCEDURE -----	229
Burden of Proof -----	229
Findings -----	229
APPEALS -----	229
Generally -----	229
APPLICABILITY -----	229
Generally -----	229
APPROXIMATE ORIGINAL CONTOUR -----	229-230
Generally -----	229-230
AREAS UNSUITABLE FOR SURFACE COAL MINING -----	230
Areas Designated by Congress -----	230
BACKFILLING AND GRADING REQUIREMENTS -----	230
Highwall Elimination -----	230
CESSATION ORDERS -----	230
Generally -----	230
CIVIL PENALTIES -----	230-231
Generally -----	230
Amount -----	231
Hearings Procedure -----	231
EVIDENCE -----	231
Generally -----	231
HEARINGS -----	231
Generally -----	231
Notice -----	231
Procedure -----	231
HYDROLOGIC SYSTEM PROTECTION -----	231
Generally -----	231
INSPECTIONS -----	231
Generally -----	231
NOTICES OF VIOLATION -----	231-232
Generally -----	231-232
Specificity -----	232
PREVIOUSLY MINED LANDS -----	232
Generally -----	232
PUBLIC HEALTH AND SAFETY -----	232
Imminent Danger -----	232
ROADS -----	232
Generally -----	232
STATE PROGRAM -----	232
Generally -----	232
VARIANCES AND EXEMPTIONS -----	232-233
Generally -----	232
2-Acre -----	232-233

Topical Index

	<u>Page(s)</u>
SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 -- Continued	
WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS -----	233
Discharges from Disturbed Areas -----	233
WORDS AND PHRASES -----	233
SURFACE RESOURCES ACT -----	233
(See also Hearings, Mining Claims--if included in this Index.)	
VERIFIED STATEMENT -----	233
SURVEYS OF PUBLIC LANDS -----	233-235
(See also Boundaries, Public Lands--if included in this Index.)	
GENERALLY -----	233-234
AUTHORITY TO MAKE -----	234
DEPENDENT RESURVEYS -----	234-235
INDEPENDENT RESURVEYS -----	235
TAR SANDS -----	235-236
TIMBER SALES AND DISPOSALS -----	236
TORTS -----	236-237
(See also Appeals, Claims Against the United States, Irrigation Claims--if included in this Index.)	
SCOPE OF EMPLOYMENT -----	236-237
TRESPASS -----	237
GENERALLY -----	237
UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY	
ACQUISITION POLICIES ACT OF 1970 -----	237-239
(See also Appeals--if included in this Index.)	
UNIFORM REAL PROPERTY ACQUISITION POLICY -----	237
Generally -----	237
Expenses Incidental to Transfer of Title to the United States --	237
UNIFORM RELOCATION ASSISTANCE -----	237-239
Generally -----	237
Moving and Related Expenses -----	237-239
Generally -----	237-238
Payments in Lieu of Moving and Related Expenses -----	239
Generally -----	239
Fixed Payment(s) -----	239
Taking of Business Operation -----	239
Replacement Housing Payment for Homeowners -----	239
Generally -----	239
WATER AND WATER RIGHTS -----	239
GENERALLY -----	239
STATE LAWS -----	239
WATER POLLUTION CONTROL -----	239
(See also Environmental Quality, Hearings--if included in this Index.)	
FEDERAL WATER POLLUTION CONTROL ACT -----	239
WILDERNESS ACT -----	239-242
WILDLIFE REFUGES AND PROJECTS -----	242
(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)	
GENERALLY -----	242
LEASES AND PERMITS -----	242
WITHDRAWALS AND RESERVATIONS -----	243-245
GENERALLY -----	243

Topical Index

Page(s)

WITHDRAWALS AND RESERVATIONS -- Continued

AUTHORITY TO MAKE -----	243
EFFECT OF -----	243-244
POWERSITES -----	244
RECLAMATION WITHDRAWALS -----	245
SPRINGS AND WATERHOLES -----	245
STATE SELECTIONS -----	245
WORDS AND PHRASES -----	245

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CASE SYMBOLS

ANCAB	--	Alaska Native Claims Appeal Board
D	--	Ad Hoc Appeals
IA-T	--	Indian Appeals -- Tort
IBCA	--	Interior Board of Contract Appeals
IBIA	--	Interior Board of Indian Appeals
IBLA	--	Interior Board of Land Appeals
IBMA	--	Interior Board of Mine Operations Appeals
IBSMA	--	Interior Board of Surface Mining and Reclamation Appeals
M	--	Solicitor's Opinion
OHA	--	Office of Hearings and Appeals
SEC	--	Office of the Secretary

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Editor's Note: The headnotes in this volume have been sorted by a computer. Editorial changes have been made to allow for grouping of the headnotes where they were similar and/or identical to headnotes from two or more decisions.

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Abernathy, Bob F., 71 IBLA 149 (Mar. 9, 1983) -----146, 180, 185	Agel, Ronald C., 73 IBLA 340 (June 10, 1983) -----169, 173
Acting Aberdeen Area Director, Bureau of Indian Affairs; Estate of Trust, Eugene R. v., 11 IBIA 203 (May 27, 1983) ----92, 94, 95, 96	Ahrens, Anne B., 70 IBLA 358 (Feb. 3, 1983) -----155
Acting Area Director, Navajo Area Office, Bureau of Indian Affairs; Begay, Johnny v., 12 IBIA 107 (Dec. 9, 1983) -----209	Airflo Instrument Co. (The), Appeal of, IBCA-1323-12-79 (Jan. 13, 1983) -----47, 49
Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs; Prieto, Dora Joyce v., 11 IBIA 124 (Mar. 22, 1983) -----29, 91, 98, 228	Alaska, State of, 70 IBLA 369 (Feb. 3, 1983) -----23, 216, 220
Acting Ass't Secretary for Indian Affairs; Ute Mountain Ute Tribe v., 11 IBIA 168 (Apr. 19, 1983), 90 I.D. 169 -----29	71 IBLA 256 (Mar. 21, 1983) -----20, 21, 60, 88
Acting Deputy Ass't Secretary-- Indian Affairs (Operations); Seattle Indian Center v., 12 IBIA 67 (Dec. 5, 1983), 90 I.D. 515 -----11, 90	71 IBLA 394 (Mar. 30, 1983) -----15
Acting Deputy Ass't Secretary-- Indian Affairs (Operations); Transwestern Pipeline Co. v., 12 IBIA 49 (Oct. 28, 1983), 90 I.D. 474 -----29, 94, 98, 208, 211, 229	74 IBLA 275 (July 25, 1983) -----19, 21
Acting Deputy Ass't Secretary-- Indian Affairs (Operations); United Indians of All Tribes Foundation v., 11 IBIA 226 (July 5, 1983) -----6, 90, 91, 206, 207, 208	Alaska, State of v. Thorson, Marcia K.; State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983) -----15, 17, 22
(On Reconsideration), 11 IBIA 276 (Aug. 15, 1983), 90 I.D. 376 -----91, 207	Alaska, State of, Matrona Johnson, 71 IBLA 63 (Feb. 22, 1983) -----15
Acting Deputy Ass't Secretary-- Indian Affairs (Operations); Urban Indian Council, Inc. v., 11 IBIA 146 (Apr. 4, 1983) -----10, 28, 30, 90, 91	Alford, Tommy L., 71 IBLA 29 (Feb. 16, 1983) -----4, 7, 152, 213
Acting Deputy Ass't Secretary-- Indian Affairs (Operations); White Sands Forest Products, Inc. v., 11 IBIA 299 (Sept. 12, 1983), 90 I.D. 396 -----42, 91, 92	Alker, Patricia C., 70 IBLA 211 (Jan. 24, 1983) -----11, 60, 87, 222
Acting Deputy Director, Office of Indian Education Programs; Zarr, Diane v., 11 IBIA 174 (Apr. 21, 1983), 90 I.D. 172 -----9, 29, 35, 98, 205, 216	Allen, Henry, Harold Dils, 76 IBLA 14 (Sept. 6, 1983) -----71, 77, 107, 130
Adams, C. Donald & Dorothy M., 71 IBLA 371 (Mar. 28, 1983) -----85	Allen, Matthew v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 116 (Dec. 9, 1983) -----98, 208
Adams, Duella M. & Lyle R., 70 IBLA 63 (Jan. 10, 1983) -----51, 52, 204	Allen, Philip, Desert Wilderness Coalition, 77 IBLA 330 (Dec. 5, 1983) -----83, 242
Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983) -----5, 54, 63, 139, 161, 178, 185, 205, 228	Alleson, Alice L. & Frances, 77 IBLA 106 (Nov. 14, 1983) -----234, 235
	Allison, Alyson A., & James N., III, 72 IBLA 333 (Apr. 29, 1983) -----5, 54, 99, 187, 191, 197
	Altex Oil Corp., 73 IBLA 73 (May 17, 1983) -----35, 104, 143, 171, 174, 182, 242
	Altrogge, R. C., 78 IBLA 24 (Dec. 12, 1983) -----151, 180, 186
	Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983) -----11, 30, 57, 79, 87, 100, 113, 119, 127, 134, 135, 215, 218, 222
	Amax Coal Co., 74 IBLA 48 (June 28, 1983) -----231
	Amberex Corp., 78 IBLA 152 (Dec. 29, 1983) -----159, 164
	Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983) -----142, 170, 173

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
American Petrofina Co. of Texas, 73 IBLA 120 (May 23, 1983) -----144, 151	Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983) -----145, 180, 184
American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983) -----27, 35, 210, 211	Angle, Jay R., 77 IBLA 242 (Nov. 29, 1983) -----159, 179, 194
Aminoil USA, Inc., 70 IBLA 5 (Jan. 6, 1983) -----85	Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983) -----58, 151, 160
Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983) -----153, 179, 193 77 IBLA 27 (Oct. 31, 1983) -----183, 201 78 IBLA 93 (Dec. 19, 1983) -----99, 194, 201, 202	Antunovich, George, John E. Curran, 76 IBLA 301 (Oct. 19, 1983), 90 I.D. 464 -----51, 100, 125, 227, 228
Amoco Production Co. et al., 71 IBLA 241 (Mar. 21, 1983) -----169, 173	<u>A P P E A L (S) O F: See Appellant's Name</u>
Anadarko Area Director, Bureau of Indian Affairs; Burns, Edmond H., Mark Hammons v., 11 IBIA 40 (Jan. 14, 1983) -----6 (On Reconsideration), 11 IBIA 133 (Mar. 22, 1983) -----28, 98, 219	Application for Costs (Central Colorado Contractors, Inc.), IBCA-1672-4-83 (Aug. 17, 1983), 90 I.D. 379 -----47
Andersen, Joe V., Art Rubash, Estate of Don T. Andersen, 75 IBLA 71 (Aug. 10, 1983) -----68, 77, 107, 130	Arbo, Richard S.; U.S. v., 70 IBLA 244 (Jan. 25, 1983) -----11, 55, 56, 57, 87, 114, 117, 120, 122, 221
Anderson, Bruce, 77 IBLA 376 (Dec. 7, 1983) -----144, 154, 164, 184	Archer, John D., 74 IBLA 323 (July 28, 1983) -----52, 103, 104, 202, 219, 224
Anderson, Charles, 76 IBLA 402 (Oct. 27, 1983) -----1, 6, 142, 151, 163, 179	Archer, John D., et al., 75 IBLA 128 (Aug. 15, 1983) -----12, 26, 36, 100, 101, 103, 202, 223
Anderson, Ida Lee, 70 IBLA 259 (Jan. 26, 1983) -----80, 145, 172 70 IBLA 383 (Feb. 8, 1983) -----153 (On Reconsideration), 73 IBLA 223 (May 31, 1983) -----153 76 IBLA 395 (Oct. 27, 1983) -----83, 151, 175, 241	Archibald, William S., 75 IBLA 236 (Aug. 24, 1983) -----51
Anderson, John R., 71 IBLA 172 (Mar. 10, 1983) -----81, 142, 146, 213, 218	ARCO Alaska, Inc., 78 IBLA 115 (Dec. 22, 1983) -----171, 175
Anderson, Mark G., 70 IBLA 18 (Jan. 6, 1983) -----144, 151, 159	Area Director, Navajo Area Office, Bureau of Indian Affairs; Allen, Matthew v., 12 IBIA 116 (Dec. 9, 1983) -----98, 208
Anderson, Rick & Linda, 76 IBLA 212 (Oct. 17, 1983) -----124, 135, 137, 243, 244	Area Director, Navajo Area Office, Bureau of Indian Affairs; Barton, Wilbur v., 12 IBIA 110 (Dec. 9, 1983), 90 I.D. 536 -----98, 208
Anderson, Zada, et al., 70 IBLA 122 (Jan. 13, 1983) -----58, 60, 66, 76, 107, 128	Area Director, Navajo Area Office, Bureau of Indian Affairs; Begay, Henry W. v., 12 IBIA 119 (Dec. 9, 1983), 90 I.D. 539 -----11, 98, 208
Andrews, Peter, Sr., 77 IBLA 316 (Nov. 30, 1983) -----15, 18, 201	Area Director, Navajo Area Office, Bureau of Indian Affairs; Day, Sam, IV v.; & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983) -----13, 57, 61, 93
Andrews, Randal L., Delbert L. McGuire, & Virgil A. Ruckdashel, 5 OHA 113 (Mar. 21, 1983) -----62, 208	Area Director, Portland Area Office, Bureau of Indian Affairs; Ruff, Larry E. v., 11 IBIA 267 (Aug. 8, 1983) -----10, 95
	Armstrong, Hepburn T., 72 IBLA 329 (Apr. 29, 1983) -----156, 180, 185

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983) -----16, 17, 22, 175, 176, 186, 244	Barton, Wilbur v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 110 (Dec. 9, 1983), 90 I.D. 536 -----98, 208
Asarco, Inc., 70 IBLA 91 (Jan. 11, 1983) -----101, 245	Bauer, Robert E., 75 IBLA 62 (Aug. 5, 1983) -----73, 111
72 IBLA 110 (Apr. 14, 1983) -----101	Baxter, Betty E., 76 IBLA 188 (Oct. 6, 1983) -----7, 10, 55, 56, 59, 60, 69, 77, 111, 130
Askins, Gary D., 74 IBLA 12 (June 24, 1983) -----30, 105, 195	Bean, Charles E., 73 IBLA 108 (May 23, 1983) -----70, 131
Ass't Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs; Walch Logging Co., Inc., Dant & Russell, Inc. v., 11 IBIA 85 (Mar. 18, 1983), 90 I.D. 88 -----9, 55, 58, 60, 92	Beaver, Dennis Gail, Estate of, 11 IBIA 135 (Mar. 28, 1983) -----95
12 IBIA 126 (Dec. 22, 1983) -----219	Bechtel, Joanne F., 76 IBLA 1 (Sept. 6, 1983) -----189, 199
Ass't Secretary for Indian Affairs; Melsheimer, Juanita v., 11 IBIA 155 (Apr. 14, 1983), 90 I.D. 165 -----16, 28, 94, 98, 228	Beck, Edward H., 76 IBLA 80 (Sept. 21, 1983) -----74, 77, 107, 133
Ass't Secretary for Indian Affairs; Pueblo of Laguna v., 12 IBIA 80 (Dec. 7, 1983), 90 I.D. 521 -----6, 8, 9, 13, 29, 206, 208, 224, 225	Begay, Henry W. v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983), 90 I.D. 539 -----11, 98, 208
Auge, Raymond C. v. Bureau of Land Management, 76 IBLA 83 (Sept. 21, 1983) -----86, 87	Begay, Johnny v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 107 (Dec. 9, 1983) -----209
B & B Contractors, Appeal of, IBCA-1646-1-83 (May 13, 1983), 90 I.D. 226 -----43, 221	Bekins, Floyd R., Jr., 75 IBLA 80 (Aug. 10, 1983) -----72, 77, 107, 132
Balding, John V., 76 IBLA 218 (Oct. 17, 1983) -----7, 55, 58, 75, 77, 108, 133	Belser, Eleanor A., 72 IBLA 232 (Apr. 26, 1983) -----68, 129, 139, 205, 228
Baldwin, Lloyd M., 75 IBLA 251 (Aug. 25, 1983) -----23, 149, 213, 216, 220	Bengoa, Frank, 74 IBLA 367 (July 28, 1983) -----7, 55, 58, 69, 77, 108, 130
Balen, Jacqueline, 73 IBLA 383 (June 15, 1983) -----68, 129, 140, 205, 228	Berg, Rhinehart, 71 IBLA 131 (Mar. 9, 1983) -----106, 117, 125, 134, 135
Banco Exploration, Inc., 77 IBLA 226 (Nov. 28, 1983) -----79, 113	Berg, Vernon I., 72 IBLA 211 (Apr. 21, 1983) -----189, 192, 198
Barnes, Joseph A., et al., 78 IBLA 46 (Dec. 13, 1983), 90 I.D. 550 -----4, 35, 127, 135, 200, 202, 205, 228, 233	Bernhardt, Donna, 73 IBLA 207 (May 27, 1983) -----57, 71, 78, 108
Barrows, Gerard C., 71 IBLA 262 (Mar. 22, 1983) -----5, 54, 99, 155	Bess, Stephen M. & Alice, 71 IBLA 122 (Mar. 7, 1983) -----169, 173
Bartlett, Phyllis Inez Maston, Daniel Walker Taylor, 71 IBLA 1 (Feb. 9, 1983) -----25, 89	Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983) -----80, 84, 212
	Billings American Indian Council v. Deputy Ass't Secretary-- Indian Affairs (Operations) 11 IBIA 142 (Apr. 1, 1983) -----9, 28, 90
	Bingham, H. E., et al., 73 IBLA 19 (May 9, 1983) -----106, 124, 139, 240
	Bird, Irvin D., Jr., 73 IBLA 210 (May 27, 1983) -----25, 26, 30, 101, 138, 227, 245

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Black Hills Power & Light Co., 73 IBLA 199 (May 26, 1983) -----27, 210	Bureau of Land Management; Auge, Raymond C. v., 76 IBLA 83 (Sept. 21, 1983) -----86, 87
Blackhurst, John A., 70 IBLA 219 (Jan. 24, 1982) -----154, 160	Bureau of Land Management; Briggs, James E. v., 75 IBLA 301 (Aug. 29, 1983) -----86, 87
Blankenship, Sam, 5 IBSMA 32 (Apr. 26, 1983), 90 I.D. 174 -----232	Bureau of Land Management; Claridge, Chris v., 71 IBLA 46 (Feb. 18, 1983) -----61, 86, 87
Blake, Gordon J., et al., 75 IBLA 1 (Aug. 2, 1983) -----71, 78, 132	Bureau of Land Management; Houghland Farms, Inc. v., 77 IBLA 245 (Nov. 30, 1983) -----13, 87, 206, 207, 237
Bloch, Thomas M., 76 IBLA 364 (Oct. 25, 1983) -----140, 150, 153	Bureau of Land Management; Lines, Ruskin, Jr. v., 76 IBLA 170 (Sept. 30, 1983) -----11, 57, 86, 215
Block, Harold H., 74 IBLA 156 (July 12, 1983) -----72, 77, 107, 132	Bureau of Land Management; Smelser, Homer v., 75 IBLA 44 (Aug. 5, 1983) -----86, 206, 207
Booth, William J., 73 IBLA 274 (June 7, 1983) -----71, 110	Burney, William L., 72 IBLA 62 (Apr. 12, 1983) -----5, 23, 203, 216
Bradke, Kenneth S., 73 IBLA 216 (May 27, 1983) -----147, 156, 164	Burns, Edmond H., Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs, 11 IBIA 40 (Jan. 14, 1983) -----6
Bradshaw, Karen (Johnson), 75 IBLA 342 (Aug. 31, 1983) -----51, 63	(On Reconsideration), 11 IBIA 133 (Mar. 22, 1983) -----28, 98, 219
Brentwood, Inc., 76 IBLA 73 (Sept. 21, 1983), 90 I.D. 421 -----30, 233	Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983) -----187, 191, 197
Brewington, Ernest L., 73 IBLA 167 (May 24, 1983) -----119, 124, 225, 226, 244	Bush, Joseph L. & Betty, 71 IBLA 324 (Mar. 23, 1983) -----68, 129, 205, 207
Briggs, James E. v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983) -----86, 87	Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983) -----188, 192, 197
Brinkerhoff, Zula C., 75 IBLA 179 (Aug. 22, 1983) -----124, 126	CAF Co., 73 IBLA 203 (May 27, 1983) -----102, 104, 147, 170, 182, 236
Brinton, John C., Estate of, 71 IBLA 160 (Mar. 10, 1983) -----11, 33, 34, 138	Caithness Corp., 72 IBLA 350 (Apr. 29, 1983) -----26, 85
Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983) -----16, 18, 22	California Energy Co., Inc., 70 IBLA 221 (Jan. 24, 1983) -----85, 228
Britton, David, 74 IBLA 271 (July 25, 1983) -----100, 101, 139	Camblos, James L., III, 76 IBLA 174 (Sept. 30, 1983) -----150, 163
Broda, Eleanor V., 77 IBLA 63 (Nov. 7, 1983) -----190, 199	Cambridge Mining Co., 74 IBLA 26 (June 24, 1983) -----8, 13, 32
Broda, Joseph F., 71 IBLA 390 (Mar. 29, 1983) -----188, 191, 197	Cambridge, Robert K., 72 IBLA 66 (Apr. 12, 1983) -----140, 192, 213
Brown, David R., Jr., Appeal of, IBCA-1600-7-82 (Mar. 31, 1983) -----37, 38, 39, 41, 47, 60	Camp, James, 76 IBLA 96 (Sept. 21, 1983) -----75, 77, 112
Brown, Tom, 74 IBLA 34 (June 27, 1983) -----106, 124, 139, 240	Campbell, Norma H., 73 IBLA 390 (June 15, 1983) -----71, 110
Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983) -----27, 100, 202, 223, 229, 237	Cannon, Florence; U.S. v., 70 IBLA 328 (Feb. 1, 1983) -----56, 114, 117, 120, 122
Bryan, M. Joan, Michael Rabatich, 76 IBLA 192 (Oct. 6, 1983) -----118, 123, 136, 243	

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Carroll, Richard F., 71 IBLA 307 (Mar. 22, 1983) -----	147, 160	Chudnow, James M., 70 IBLA 139 (Jan. 14, 1983) -----	181
(On Reconsideration), 76 IBLA 151 (Sept. 27, 1983), 90 I.D. 432 -----	5, 6, 24, 55, 150, 163, 206	70 IBLA 150 (Jan. 18, 1983) -----	5, 105, 142
Carter, L. C., et al., 76 IBLA 90 (Sept. 21, 1983) -----	73, 111	76 IBLA 167 (Sept. 28, 1983) -----	53, 195
Casework Installations, Ltd., Appeal of, IBCA-1635-11-82 (June 7, 1983) -----	39, 43, 218	78 IBLA 78 (Dec. 16, 1983) -----	151, 194
Casey, Powell A., Appeal of, IBCA-1638-11-82 (May 23, 1983), 90 I.D. 230 -----	40, 42, 43, 48, 216	Chudnow, James M., et al., 70 IBLA 71 (Jan. 11, 1983) -----	6, 22, 153, 171, 219
CECOS International, Inc., Appeal of, IBCA-1667-3-83 (Oct. 28, 1983) -----	39, 46, 47	Chudnow, James M., John L. Messinger, 70 IBLA 225 (Jan. 24, 1983) -----	52, 194
Central Colorado Contractors, Inc., Appeal of, IBCA-1203- 8-78 (Mar. 25, 1983), 90 I.D. 109 -----	37, 38, 39, 40, 41, 44, 46, 49, 57, 61, 215	75 IBLA 69 (Aug. 10, 1983) -----	61, 149, 183
Central Colorado Contractors, Inc. (Application for Costs), IBCA-1672-4-83 (Aug. 17, 1983), 90 I.D. 379 -----	47	77 IBLA 73 (Nov. 8, 1983) -----	53, 196
C. G. Norton Co., Appeal of, IBCA-1647-1-83 (Nov. 14, 1983) -----	37, 39, 41, 45, 49	77 IBLA 77 (Nov. 8, 1983) -----	154, 172, 194
Chambers, Larry, 77 IBLA 214 (Nov. 22, 1983) -----	190, 191, 199	77 IBLA 147 (Nov. 15, 1983) -----	194
Chappell, William Lavon, et al.; U.S. v., 72 IBLA 88 (Apr. 13, 1983) -----	10, 115, 118, 121, 136, 225, 244	Chudnow, James M., Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983) -----	23, 216, 220
Chefarnrmute, Inc., 75 IBLA 242 (Aug. 24, 1983) -----	14, 17, 20, 22, 243	Cilch, Herbert, 73 IBLA 171 (May 24, 1983) -----	78, 130
Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983) -----	139, 148, 182	Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983) -----	210, 211, 219
Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp., 11 IBLA 54 (Feb. 10, 1983), 90 I.D. 61 -----	28	C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983) -----	87, 140, 196, 200, 222
Chiarenza, Anthony, et al., 74 IBLA 350 (July 28, 1983) -----	26, 27, 79, 203, 214, 226	Claridge, Chris v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983) -----	61, 86, 87
Childress, John W., 76 IBLA 42 (Sept. 14, 1983) -----	158, 220	Clark, Addison Girard, 72 IBLA 321 (Apr. 28, 1983) -----	68, 76, 107, 130
Christensen, Benjamin D., 74 IBLA 239 (July 19, 1983) -----	51, 245	Clark, Donald L., 71 IBLA 169 (Mar. 10, 1983) -----	25, 126, 201
		Clark, Donald R., 70 IBLA 39 (Jan. 10, 1983) -----	26, 34, 209
		Clark, Herbert, 73 IBLA 195 (May 26, 1983) -----	10, 56, 59, 60, 71, 76, 110
		Clark, Shirley A., 77 IBLA 51 (Nov. 7, 1983) -----	3, 89, 90, 244
		Clontz, Farrell D., 76 IBLA 180 (Oct. 3, 1983) -----	74, 77, 107, 133
		Coastal States Energy Co., 70 IBLA 386 (Feb. 9, 1983) -----	31, 102
		Coburn, Maurice W., 75 IBLA 293 (Aug. 29, 1983) -----	153, 158, 165
		Cochran, J. M. & Leola, Uniform Relocation Assistance Appeal of, 5 OHA 221 (Nov. 3, 1983) -----	237

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Coleman, Gerald E., 70 IBLA 238 (Jan. 25, 1983) -----155, 190	Cook Sheep Co. (Trust), 70 IBLA 348 (Feb. 3, 1983) -----86
Colley, Bryan, 71 IBLA 299 (Mar. 22, 1983) -----55, 187, 191, 197	Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983) -----28, 104, 105, 182, 190, 236
Colley, Eugene O., 78 IBLA 64 (Dec. 13, 1983) -----153, 164	Cooper, Robert H., 75 IBLA 354 (Aug. 31, 1983) -----33, 34
Collier, Jay Edwin, 70 IBLA 283 (Jan. 26, 1983) -----67, 129	Copeland, B. W., 75 IBLA 87 (Aug. 11, 1983) -----12, 35, 106, 123, 136
Collister, William B., 73 IBLA 64 (May 12, 1983) -----161	Cothern, Wilford, 76 IBLA 23 (Sept. 8, 1983) -----82, 240, 245
Colorado Springs & Aurora, Cities of, 77 IBLA 395 (Dec. 9, 1983) -----210, 211, 219	Cowan, Edmund J., 76 IBLA 257 (Oct. 17, 1983) -----76, 77, 113, 134
Colorado Open Space Council, 73 IBLA 226 (May 31, 1983) -----52, 53, 82, 139	Cramer, Philip A., 74 IBLA 1 (June 21, 1983) -----12, 35, 124, 136, 223, 244
Comm'r of Indian Affairs; Lord, Lillian, a.k.a. Lillian George v., 11 IBLA 51 (Feb. 9, 1983) -----28, 220	Crawford, George S., 75 IBLA 290 (Aug. 26, 1983) -----101
Confederated Tribes of the Chehalis Reservation, Appeal of, IBCA-1640-12-82 (May 20, 1983), 90 I.D. 228 -----43, 46, 216	Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983) -----189, 192, 198
Connell, Thomas, 70 IBLA 289 (Jan. 27, 1983) -----142, 172, 207	Cretaceous Partnership, RBE, Inc., 75 IBLA 203 (Aug. 22, 1983) -----162, 179
70 IBLA 292 (Jan. 27, 1983) -----143, 172	Crocker, Grace P., 73 IBLA 78 (May 17, 1983) -----66, 124, 128, 134, 136, 243, 244
75 IBLA 209 (Aug. 22, 1983) -----10, 149, 193, 215	76 IBLA 231 (Oct. 17, 1983) -----71, 77, 107, 130
Conner, John E., 72 IBLA 83 (Apr. 13, 1983) -----188, 192, 198	Crow Indian Agency, 78 IBLA 7 (Dec. 12, 1983) -----235
Connor et al.; U.S. v., 72 IBLA 254 (Apr. 27, 1983) -----10, 23, 56, 60, 106, 118, 121, 215, 220, 221	Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983) -----7, 55, 58, 75, 77, 108, 130
Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983) -----167, 183, 184	Darmac Coal Co., 74 IBLA 100 (June 30, 1983) -----229, 231, 232, 233
Conover, Rachel G., 75 IBLA 323 (Aug. 30, 1983) -----73, 132	Davis & Smith, Ltd., 73 IBLA 22 (May 9, 1983) -----169, 173
Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983), 90 I.D. 49 -----230, 231, 232	Davis, Ann M., et al., 74 IBLA 96 (June 30, 1983) -----157, 162
Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983) -----142, 144, 166, 200, 237	Davis, Howard K., 70 IBLA 7 (Jan. 6, 1983) -----5, 54, 99, 141, 159
Cook Inlet Region, Inc. 77 IBLA 383 (Dec. 9, 1983), 90 I.D. 543 -----19, 25	Davis Oil Co., 75 IBLA 163 (Aug. 18, 1983) -----82, 240
Cook, Lyle O., et al.; U.S. v., 71 IBLA 268 (Mar. 22, 1983) -----51, 115, 117, 120	Dawson, Chester F., 73 IBLA 27 (May 9, 1983) -----50, 54, 79, 226
	Dawson, S., 73 IBLA 301 (June 7, 1983) -----139, 148, 182

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Dawursk, Michele M., 71 IBLA 343 (Mar. 28, 1983) -----140, 191, 213 73 IBLA 36 (May 9, 1983) -----147, 151, 161	Dieckmann, Adolf (Trust), 76 IBLA 357 (Oct. 24, 1983) -----7, 55, 58, 69, 77, 108, 130
Day, Sam, IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs; & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983) -----13, 57, 61, 93	Dighans, Vance W., Leon S. Wright, 69 IBLA 394 (Jan. 4, 1983) -----77, 108, 128
Day, William E., 72 IBLA 364 (May 2, 1983) -----78, 107, 130	Dillingham, John, et al., 73 IBLA 156 (May 24, 1983) -----26, 27, 79, 226
Deck Oil Co., 70 IBLA 97 (Jan. 11, 1983) -----187, 190, 196	Dillingham, John & Mabel, 75 IBLA 146 (Aug. 17, 1983) -----68, 77, 107, 130
Delano, Derelys W., 69 IBLA 360 (Jan. 3, 1983) -----154, 176, 190	Dillingham Maritime, Appeal of, IBCA-1360-5-80 (June 8, 1983) -----41, 50
Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983) -----7, 103, 227	DNA--People's Legal Services, Inc., In re Attorney's Fees Request of, 11 IBIA 285 (Sept. 9, 1983), 90 I.D. 389 -----28, 53, 206
Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983) -----12, 27, 35, 79, 88, 206, 210, 212	Dodd, Frazier & Co., Appeal of, IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983), 90 I.D. 41 -----42, 43, 44
Denver Pump Co., Inc., Appeal of, IBCA-1725-9-83 (Nov. 14, 1983)-----43, 221	Dolezal, George, Jr., 75 IBLA 298 (Aug. 29, 1983) -----149, 158, 162
Deputy Ass't Secretary--Indian Affairs (Operations); Billings American Indian Council v., 11 IBIA 142 (Apr. 1, 1983) -----9, 28, 90	Dowers, John D., 75 IBLA 266 (Aug. 26, 1983) -----71, 77, 107, 130
Deputy Ass't Secretary--Indian Affairs (Operations); Idaho Mining Corp. v., 11 IBIA 249 (July 29, 1983), 90 I.D. 329 -----29, 93, 216, 228	Doyle, Pamela D., Appeal of, 5 OHA 219 (Nov. 2, 1983) -----63, 209
Deputy Ass't Secretary--Indian Affairs (Operations); Native Americans for Community Action v., 11 IBIA 214 (July 1, 1983), 90 I.D. 283 -----11, 36, 54, 63, 84, 91, 98, 206, 207	Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983) -----17, 18, 20, 21, 22, 117 74 IBLA 139 (July 6, 1983), 90 I.D. 289 -----6, 14, 18, 19, 20, 21, 24, 78, 214 74 IBLA 281 (July 25, 1983) -----14, 19, 20 (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983) -----14, 19, 20, 21, 60, 88
Deputy Ass't Secretary--Indian Affairs (Operations); Racquet Drive Estates, Inc. v., 11 IBIA 184 (May 24, 1983), 90 I.D. 243 -----92, 93	Doyon, Ltd., MTNT, Ltd., 75 IBLA 65 (Aug. 10, 1983) -----14, 19, 20
Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp.; Cheyenne & Arapaho Tribes of Western Oklahoma v., 11 IBIA 54 (Feb. 10, 1983), 90 I.D. 61 -----28	Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983) -----64, 66, 80
Devault, Jack & Dorothy, 72 IBLA 324 (Apr. 28, 1983) -----69, 109	Dubey, Eleanor L. M., 76 IBLA 177 (Sept. 30, 1983) -----189, 194, 199
Devlin, Virginia V., 72 IBLA 361 (May 2, 1983) -----156, 165	Duletsky, Victor S., 77 IBLA 12 (Oct. 31, 1983) -----159, 164
	Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983) -----150, 158, 179, 194
	Eastern Pennsylvania Lutheran Camp Corp., Uniform Relocation Assistance Appeal of, 5 OHA 201 (Oct. 4, 1983) -----238

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Edwards, Burton E., 78 IBLA 62 (Dec. 13, 1983) -----235	Estate of Two Bulls, Richard Doyle, 11 IBIA 77 (Mar. 15, 1983) -----94, 95, 96
Edwardsen, Charles, Jr., 77 IBLA 228 (Nov. 28, 1983) -----17	Estate of Walker, Richard Evans, 12 IBIA 44 (Oct. 28, 1983) -----8, 13, 95, 141, 206, 207, 208
Egenhoff, George, 70 IBLA 49 (Jan. 10, 1983) -----67, 109	Estate of Willey, Helen Ward, 11 IBIA 43 (Jan. 31, 1983) -----96, 97
Emmons, Mark A., 76 IBLA 262 (Oct. 17, 1983) -----1, 167, 192	Estate of Witmer, James Philip, 77 IBLA 361 (Dec. 7, 1983) -----159, 194
Energetics, Inc., 71 IBLA 331 (Mar. 24, 1983) -----187	Estate of Wyatt, Joseph, 11 IBIA 244 (July 15, 1983) -----95, 96
Energy Resources Technology Land, Inc., et al.; U.S. v., 74 IBLA 117 (June 30, 1983) -----8, 13, 54, 61, 114, 116, 119, 122, 222	* * * * *
Enserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983) -----139, 144, 151, 205, 208	Estes, Charley O., d.b.a. Phoenix Reforestation Co., IBCA-1198- 7-78 (Aug. 11, 1983), 90 I.D. 366 -----44, 45, 46, 49, 50, 215, 217, 221
Epperson, Donald, 76 IBLA 4 (Sept. 6, 1983) -----154, 165, 183	Exxon Corp., 73 IBLA 176 (May 26, 1983) -----169, 173
<u>E S T A T E (S) O F:</u>	Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983) -----146, 160, 177
Estate of Beaver, Dennis Gail, 11 IBIA 135 (Mar. 28, 1983) -----95	Feezor, J. Gary, et al.; U.S. v., 74 IBLA 56 (June 29, 1983), 90 I.D. 262 -----116, 122, 213
Estate of Brinton, John C., 71 IBLA 160 (Mar. 10, 1983) -----11, 33, 34, 138	Feick Associates, 76 IBLA 292 (Oct. 18, 1983) -----140, 158, 163, 205
Estate of Hail, Ralph James (Elmer), 12 IBIA 62 (Nov. 10, 1983) -----29, 96, 207, 217	Ferguson Construction Co., Appeal of, IBCA-1681-6-83 (Oct. 28, 1983) -----37, 39, 43, 46, 48, 218
Estate of Jackson, Andrew, 12 IBIA 39 (Oct. 18, 1983) -----12, 95, 96	Fields, Arthur R., Sr., 73 IBLA 52 (May 12, 1983) -----70, 113, 131
Estate of Nichols, Woodie, 69 IBLA 382 (Jan. 4, 1983) -----7, 55, 58, 66, 76, 108, 128	Figert, Malcolm L., Leonard Weiner, 77 IBLA 160 (Nov. 16, 1983) -----125, 137
Estate of Pekah, James Wermey, 11 IBIA 237 (July 6, 1983) -----8, 94, 97, 98, 227, 228	Fimple Enterprises, Inc., et al., 70 IBLA 180 (Jan. 20, 1983) -----166
Estates of Scarborough, Edwin (Edward) J. & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983) -----10, 96, 97	Florez, A. K., 73 IBLA 142 (May 23, 1983) -----68, 131
Estate of Styles, Stanley, 75 IBLA 272 (Aug. 26, 1983) -----74, 77, 107, 133	FMC Corp., 74 IBLA 389 (July 29, 1983) -----31, 103, 214
Estate of Tieyah, Julia, 11 IBIA 211 (June 8, 1983) -----97	Foster, O. L., 72 IBLA 367 (May 3, 1983) -----189, 198
Estate of Trust, Eugene R. v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983) -----92, 94, 95, 96	Fortune Oil Co., 70 IBLA 286 (Jan. 26, 1983) -----172, 194 71 IBLA 153 (Mar. 9, 1983) 90 I.D. 84 -----81, 146, 195, 214, 218
Estate of Tsoodle, Samuel, 11 IBIA 163 (Apr. 14, 1983) -----97	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Four-Phase Systems, Inc., IBCA-1269-5-79 (Mar. 1, 1983) -----45, 47	Goldbelt, Inc., 74 IBLA 308 (July 27, 1983) -----20, 21
Fox, Charles & George H. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983) -----151, 159, 164	Golden Triangle Exploration Co., 76 IBLA 245 (Oct. 17, 1983) -----83, 107
Francana Resources, Inc., 75 IBLA 125 (Aug. 15, 1983) -----85	Gotschall, Arthur A., 78 IBLA 81 (Dec. 16, 1983) -----128, 135, 138
Franklin Real Estate Co., 71 IBLA 13 (Feb. 10, 1983) -----31, 102	Graham, Ronald R. & Dorothy L., 77 IBLA 174 (Nov. 17, 1983) -----24, 125, 135, 201, 204, 205, 214, 226
Frazier, Dean W., 73 IBLA 13 (May 5, 1983) -----68, 76, 107, 130	Grassmeier, John L., 77 IBLA 156 (Nov. 16, 1983) -----55, 63, 125, 137, 225, 243, 244
Fredericks, George, 73 IBLA 344 (June 10, 1983) -----18, 19	Green, Harold, 75 IBLA 288 (Aug. 26, 1983) -----170
Fuel Exploration, Inc., 70 IBLA 361 (Feb. 3, 1983) -----160, 177	Greene, Frank L., 72 IBLA 215 (Apr. 25, 1983) -----156
Funk Exploration, 73 IBLA 111 (May 23, 1983) -----4, 24, 55, 168, 192, 198	Griffin, William G., t/a Security of Virginia, Inc., Appeal of, IBCA-1403-10-80 (Sept. 23, 1983) -----45, 48
Furlong, Francis X., II, 73 IBLA 67 (May 16, 1983) -----5, 54, 189, 192, 198, 205, 228	Grooms, L. H., 70 IBLA 228 (Jan. 24, 1983) -----3, 60, 123, 135
Garcia, Raymond, J., 75 IBLA 346 (Aug. 31, 1983) -----69, 109	Grover, Arden, R., John R. Schumacher, 73 IBLA 308 (June 7, 1983) -----1, 65, 168, 193
Gattis, Robert, et al., 73 IBLA 92 (May 19, 1983) -----79	Grynberg, Celeste C., 74 IBLA 180 (July 18, 1983) -----6, 55, 56, 88, 141, 180, 218, 221
Gelis, David L., 72 IBLA 327 (Apr. 28, 1983) -----69, 130	Grynberg, Rachel S., 71 IBLA 83 (Feb. 24, 1983) -----155
GeoResources, Inc., 74 IBLA 236 (July 19, 1983) -----101, 202	72 IBLA 72 (Apr. 12, 1983) -----156
Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983) -----12, 88, 155, 165, 222	Grynberg, Stephen M., 72 IBLA 69 (Apr. 12, 1983) -----155
Gerard, Carl, 70 IBLA 343 (Feb. 2, 1983) -----145, 213, 214, 218	Guffey, Mike, 78 IBLA 139 (Dec. 29, 1983) -----168, 184, 186
Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983) -----175, 188, 198	Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983) -----31, 52, 103
Gigantosaurus Resources, Inc., 70 IBLA 52 (Jan. 10, 1983) -----145, 190	Gustin Corp., H. R. Casperson, 75 IBLA 100 (Aug. 11, 1983) -----73, 111
Gilson, Russell R., 76 IBLA 20 (Sept. 6, 1983) -----26, 79, 226	Guthrie, Lewis A., et al., In the Matters of, 5 OHA 108 (Mar. 15, 1983) -----62, 208
Glass, W. J., 76 IBLA 215 (Oct. 17, 1983) -----75, 112	Hail, Ralph James (Elmer), Estate of, 12 IBIA 62 (Nov. 10, 1983) -----29, 96, 207, 217
Glasser, Elliott, 76 IBLA 11 (Sept. 6, 1983) -----74, 77, 107, 133	Hall, Henry A. & Barbara, 75 IBLA 339 (Aug. 30, 1983) -----68, 77, 107, 130
Glenn, J. M., d.b.a. North- west Mineral Exploration, 73 IBLA 323 (June 7, 1983) -----113	Hall, Thomas C., 72 IBLA 319 (Apr. 28, 1983) -----78, 130

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Hancock Enterprises, 74 IBLA 292 (July 27, 1983) -----175, 199, 200	Hill, Eleanor A., 76 IBLA 234 (Oct. 17, 1983) -----75, 133
Handyman Building Maintenance Co., Inc., IBCA-1335-3-80 & 1411-12-80 (July 7, 1983) -----47, 48	Hills, Harry S., 71 IBLA 302 (Mar. 22, 1983) -----54, 146, 155, 180, 185, 204
Hanley, William L., 76 IBLA 93 (Sept. 21, 1983) -----69, 109	Hinkle, Harold A. & Michael B., Thomas J. Potter, 77 IBLA 152 (Nov. 16, 1983) -----78, 113
Hanlin, Kenneth L., 70 IBLA 115 (Jan. 13, 1983) -----154, 180, 184	Hirsh, Neil, 70 IBLA 307 (Jan. 28, 1983) -----58, 152, 155
Hanson Properties, Inc., 74 IBLA 364 (July 28, 1983) -----123, 136	Holland, Richard, 74 IBLA 167 (July 12, 1983) -----72, 99, 111, 126, 132
Hardcastle, Ellis Eugene, 74 IBLA 20 (June 24, 1983) -----25, 89, 90	Holliday, Bernard M., 74 IBLA 288 (July 26, 1983) -----152
Harmon, Forrest L. (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 5 OHA 96 (Feb. 25, 1983) -----238, 239	Hollis, Virgil S. (Mr.), Uniform Relocation Assistance Appeal of, 5 OHA 104 (Mar. 15, 1983) -----238
Harpel Drilling Co., 74 IBLA 228 (July 19, 1983) -----175, 196, 198	Homestake Mining Co., 73 IBLA 117 (May 23, 1983) -----70, 110
Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983) -----229, 230, 231, 232	77 IBLA 235 (Nov. 29, 1983) -----7, 55, 58, 76, 77, 108, 134
Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983) -----141, 169, 173	Hook, Donald E., 76 IBLA 367 (Oct. 25, 1983) -----6, 24, 159, 163, 203
Heath, Harold J., Lawrence Walker, 73 IBLA 147 (May 23, 1983) -----87	Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983) -----168, 196, 200, 245
Hedge, Glen M., 73 IBLA 377 (June 15, 1983) -----170, 174	Horizon Exploration Co., 72 IBLA 43 (Apr. 7, 1983) -----224
Heffner, Donald D., Uniform Relocation Assistance Appeal of, 5 OHA 168 (Sept. 15, 1983) -----238	Horschman, L. Lee, 74 IBLA 360 (July 28, 1983) -----7, 141
Heinrichs Geoexploration Co., IBCA-1213-9-78 & 1222-11-78 (June 17, 1983) -----44, 47, 48	Hosay, Philip M. & Cynthia K., Uniform Relocation Assistance Appeal of, 5 OHA 175 (Sept. 15, 1983) -----237
Heins, William F., III, 74 IBLA 133 (June 30, 1983) -----141, 193, 213	Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983) -----13, 87, 206, 207, 237
Henry Mountain Resource Area Employees (The), Appeal of, 5 OHA 127 (Mar. 31, 1983) -----63, 209	Howard, Ron W., 75 IBLA 133 (Aug. 15, 1983) -----143, 149, 154, 162, 206
Herndon, B. K., 76 IBLA 353 (Oct. 24, 1983) -----3, 50, 99, 229	Howe, Edward H., Fred Huff, Gerald A., Strauss, 76 IBLA 27 (Sept. 8, 1983) -----8, 9, 24, 65, 83, 241, 245
Hickory Creek Oil Co., 73 IBLA 173 (May 26, 1983) -----147, 156	Howell, Bob G., 71 IBLA 253 (Mar. 21, 1983) -----146, 180, 185
Hicks, Robert B., 73 IBLA 145 (May 23, 1983) -----70, 131	75 IBLA 113 (Aug. 12, 1983) -----10, 23, 56, 60, 146, 177, 215, 220, 221
Highland Reforestation, Inc., Appeal of, IBCA-1536-3-82 (July 8, 1983), 90 I.D. 297 -----39, 48, 49	75 IBLA 328 (Aug. 30, 1983) -----84, 183
Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983) -----71, 77, 107, 130	

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Huddleston, Michael, <u>et al.</u> , 76 IBLA 116 (Sept. 21, 1983) -----	65, 83, 241	<u>In re Lick Gulch Timber Sale</u> , 72 IBLA 261 (Apr. 28, 1983), 90 I.D. 189 -----	4, 201, 214, 236, 245
Huff, James A., Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983) -----	58, 59, 66, 76, 107, 128	<u>In re Otter Slide Timber Sale</u> , 75 IBLA 380 (Aug. 31, 1983) -----	201, 214, 236
Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983) -----	7, 55, 58, 69, 77, 108, 130, 140, 205, 228	<u>In re Pacific Coast Molybdenum</u> , 75 IBLA 16 (Aug. 5, 1983), 90 I.D. 352 -----	106, 119, 121, 122, 127, 201, 215, 224
Hughes, Robert W., 76 IBLA 99 (Sept. 21, 1983) -----	7, 55, 58, 75, 77, 108, 130	<u>In the Matters of Guthrie</u> , Lewis A., <u>et al.</u> , 5 OHA 108 (Mar. 15, 1983) -----	62, 208
Humbug Mining Co., 73 IBLA 270 (June 7, 1983) -----	7, 55, 58, 69, 77, 108, 130	<u>Intermountain Exploration Co.</u> , 76 IBLA 349 (Oct. 24, 1983) -----	135, 137
Hunt, Caroline (Trust Estate) <u>et al.</u> (On Reconsideration), 70 IBLA 65 (Jan. 10, 1983) -----	84	<u>Inter-Tribal Council of Nevada</u> , Inc., Appeal of, IBCA-1234-12-78 (Apr. 14, 1983) -----	40, 44, 48
Hunt, Wayne M., 73 IBLA 315 (June 7, 1983) -----	7, 10, 55, 56, 59, 60, 69, 77, 111, 130	<u>Jaca Bros., Inc.</u> , 73 IBLA 192 (May 26, 1983) -----	65, 81, 240
Hurst, Devon M., 75 IBLA 149 (Aug. 18, 1983) -----	7, 10, 55, 56, 59, 60, 69, 77, 111, 130	<u>Jackson, Andrew, Estate of</u> , 12 IBIA 39 (Oct. 18, 1983) -----	12, 95, 96
Husky Oil Co., 74 IBLA 264 (July 25, 1983) -----	143, 172	<u>Jacobs, Warren L.</u> , 71 IBLA 385 (Mar. 29, 1983) -----	1, 5, 54, 99, 167, 191
76 IBLA 380 (Oct. 25, 1983) -----	168, 176	<u>James Stewart Co.</u> , 71 IBLA 100 (Feb. 24, 1983) -----	65, 80, 240
Idaho Mining Corp. v. Deputy Ass't Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983), 90 I.D. 329 -----	29, 93, 216, 228	<u>James W. Taylor & Associates</u> , Inc., 76 IBLA 103 (Sept. 21, 1983) -----	14, 19, 30
Idaho Trail Machine Ass'n <u>et al.</u> , 75 IBLA 256 (Aug. 26, 1983) -----	82, 241	<u>Jellen, Erna, Suzanne K. Marco</u> , 70 IBLA 29 (Jan. 6, 1983) -----	67, 76, 107, 128, 139, 205, 228
IMCO Services, 73 IBLA 374 (June 15, 1983) -----	36, 111, 115, 131, 223	<u>Johnson, Edward L.</u> , 73 IBLA 253 (June 2, 1983) -----	142, 170, 173
Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983) -----	88, 140, 197, 200, 223	<u>Johnson, Glenn H., Western</u> Coal Co., 71 IBLA 96 (Feb. 24, 1983) -----	30, 31
Industrial Machine & Welding, Inc., Appeal of, IBCA-1322- 12-79 (July 11, 1983), 90 I.D. 308 -----	37, 49, 50	<u>Johnson, Ina May Collier</u> , <u>et al.</u> , 72 IBLA 26 (Apr. 5, 1983) -----	23, 216, 220
Inexco Oil Co., 74 IBLA 260 (July 22, 1983) -----	4, 5, 26, 63, 149, 179, 185	<u>Johnson, Joe N., J. Bass</u> Mahoney, Resources Invest- ment Corp., 74 IBLA 383 (July 29, 1983) -----	166, 179
<u>In re Attorney's Fees Request</u> <u>of DNA--People's Legal Ser-</u> <u>vices, Inc.</u> , 11 IBIA 285 (Sept. 9, 1983), 90 I.D. 389 -----	28, 53, 206	<u>Johnson, Ronald W.</u> , 5 IBSMA 19 (Feb. 4, 1983), 90 I.D. 54 -----	230, 233
		<u>Johnson, Thomas</u> , 77 IBLA 20 (Oct. 31, 1983) -----	14, 16, 17, 59, 61, 221
		<u>Jones & Sandy Livestock, Inc.</u> , 75 IBLA 40 (Aug. 5, 1983) -----	8, 12, 24, 36, 86, 87

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Jones, Ella Mae, 76 IBLA 205 (Oct. 11, 1983) -----25, 89, 90	King, Robert J., L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983) -----10, 12, 35, 56, 58, 60, 68, 78, 109, 118, 123, 129, 136, 217, 223, 243
Jones, James O., 75 IBLA 192 (Aug. 22, 1983) -----25, 89	
Jones, Regina Anne & Claudie Lee, 76 IBLA 17 (Sept. 6, 1983) -----2, 25, 90, 204, 225	Knox, Donale E. & Kenneth A., Uniform Relocation Assistance Appeal of, 5 OHA 87 (Feb. 9, 1983) -----237
Jones, Sam P., 71 IBLA 42 (Feb. 17, 1983) -----146, 181, 207, 208	Kohlman, Paul C., 75 IBLA 171 (Aug. 19, 1983) -----149, 162, 182, 196, 243
74 IBLA 242 (July 19, 1983) -----105, 143, 171	
Jones, T. J. & Robert E.; U.S. v., 72 IBLA 52 (Apr. 12, 1983) -----56, 115, 118, 121, 123, 136	Kohlman, Paul C., Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983) -----143, 172, 207
J. V. & Associates, 74 IBLA 45 (June 28, 1983) -----148, 193	Koopmans, John (Mr. & Mrs.), 70 IBLA 75 (Jan. 11, 1983) -----224, 233, 234
JWD III, Inc., 77 IBLA 164 (Nov. 17, 1983) -----176, 199	Kosik, Bernard, 70 IBLA 373 (Feb. 4, 1983) -----166, 167, 177
Kahn, Richard L., 71 IBLA 120 (Mar. 7, 1983) -----146, 155	Krumbein, Billy, 75 IBLA 216 (Aug. 23, 1983) -----170, 174
Kaiser, Allan, 72 IBLA 387 (May 5, 1983) -----22, 118, 123, 136, 244	Kubinski, Ralph, 76 IBLA 224 (Oct. 17, 1983) -----10, 56, 59, 60, 75, 77, 113
Kaiser Steel Corp., 76 IBLA 387 (Oct. 27, 1983), 90 I.D. 470 -----32, 103	Kulis, Richard W., 72 IBLA 251 (Apr. 27, 1983) -----58, 161, 177, 192
Karth, George E. (President), Ochopee L P Gas Co., Inc., Uniform Relocation Assistance Appeal of, 5 OHA 93 (Feb. 14, 1983) -----239	Kummerfeld, Keith R., 72 IBLA 1 (Apr. 4, 1983) -----81, 106
Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983) -----15, 16, 26, 36, 61, 222	74 IBLA 106 (June 30, 1983) -----82, 106
Kaufman, J. Pat, 71 IBLA 183 (Mar. 10, 1983) -----5, 54, 99, 117, 123, 136, 225, 243	Kunkel, Frances, 75 IBLA 199 (Aug. 22, 1983) -----2, 168, 190, 193, 195, 202
Kenney, Stephen J., Appeal of, IBCA-1438-3-81 (Sept. 30, 1983), 90 I.D. 445 (1983) -----38, 41, 42, 45	Kurtz, Gregory P. (President), Kurtz Brothers, Inc., Uniform Relocation Assistance Appeal of, 5 OHA 84 (Jan. 20, 1983) -----237
Kenyon, Myron S., 73 IBLA 10 (May 5, 1983) -----66, 107	Kutner, Jonathan, 73 IBLA 372 (June 15, 1983) -----148, 157, 178
KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983) -----11, 87, 140, 141, 166, 186, 196, 218, 222	Laczkowski, Joseph, & Eula G. Jones (Montney); U.S. v., 71 IBLA 364 (Mar. 28, 1983) -----12, 36, 115, 118, 122, 222
Kesinger, Timothy O., 72 IBLA 100 (Apr. 14, 1983) -----81, 240	Ladd Petroleum Corp., 70 IBLA 313 (Jan. 28, 1983) -----166
Kimberly Sue Coal Co., Inc., 74 IBLA 170 (July 13, 1983) -----233	L. A. Melka Marine Construction & Diving Co., Inc., Appeal of, IBCA-1511-9-81 (July 28, 1983), 90 I.D. 322 -----38, 39
	IBCA-1511-9-81 (Nov. 25, 1983), 90 I.D. 491 -----44, 218

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983) -----	58, 60, 66, 76, 107, 128	Lord, Lillian, a.k.a. Lillian George v. Comm'r of Indian Affairs, 11 IBIA 51 (Feb. 9, 1983) -----	28, 220
Langley, Dorothy, 70 IBLA 324 (Jan. 31, 1983) -----	103, 104, 169, 181, 235	Loskot, John, 71 IBLA 165 (Mar. 10, 1983) -----	81, 106
Lang-Miller, Uniform Reloca- tion Assistance Appeal of, 5 OHA 205 (Oct. 4, 1983) -----	238, 239	Lovelady, Dan, 73 IBLA 190 (May 26, 1983) -----	71, 131
Las Vegas Portland Cement, Inc., 75 IBLA 104 (Aug. 11, 1983) -----	66, 107	Lowey, Frederick W., 76 IBLA 195 (Oct. 6, 1983) -----	54, 158, 180, 186, 204
LBS Associates, Inc., 74 IBLA 192 (July 18, 1983) -----	5, 35, 54, 59, 63, 142, 148, 152, 157, 162, 164, 178, 193, 228	LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983) -----	35, 142, 148, 152, 157, 162, 164, 178, 228
Leaumont, Richard J., 71 IBLA 112 (Feb. 28, 1983) -----	81, 240	Luther Benjamin Construction Co., Inc., IBCA-1571-4-82 (Oct. 25, 1983) -----	45, 48
Lee, George L. Clay, et al., 70 IBLA 196 (Jan. 21, 1983) -----	25, 89, 201, 216, 220	Luther L. Essary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983) -----	38, 41, 46
Leonard Minerals Co., 74 IBLA 371 (July 28, 1983) -----	149, 157	Lynn, Robert G., 70 IBLA 141 (Jan. 17, 1983) -----	58, 60, 145, 160, 177
Lewis, George W., Jr., 71 IBLA 231 (Mar. 18, 1983) -----	146, 155	72 IBLA 355 (Apr. 29, 1983) -----	105, 143, 171
Lewis, Kenneth R., 70 IBLA 112 (Jan. 13, 1983) -----	1, 184, 190	(On Reconsideration), 73 IBLA 288 (June 7, 1983) -----	57, 145, 161, 177
Lewis, Thomas E., 70 IBLA 69 (Jan. 11, 1983) -----	154, 159, 176, 184	76 IBLA 383 (Oct. 27, 1983) -----	175
Liberty Petroleum Corp., 73 IBLA 368 (June 15, 1983) -----	157, 162	Lysengen, Vernie, 78 IBLA 1 (Dec. 12, 1983) -----	151, 176, 184
Lick Gulch Timber Sale, In re, 72 IBLA 261 (Apr. 28, 1983), 90 I.D. 189 -----	4, 201, 214, 236, 245	McBride, Norma L., 73 IBLA 165 (May 24, 1983) -----	52, 101
Lines, Ruskin, Jr. v. Bureau of Land Manage- ment, 76 IBLA 170 (Sept. 30, 1983) -----	11, 57, 86, 215	McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983) -----	189, 194, 199
Lomax, Gladys, 75 IBLA 89 (Aug. 11, 1983) -----	34	McConkey, Betha, Robert L. Cook, 74 IBLA 4 (June 21, 1983) -----	26, 27, 57, 79, 226
Lone Star Steel Co., 71 IBLA 92 (Feb. 24, 1983) -----	31, 102	McDorman, Inez, Audrey Pilger, 72 IBLA 383 (May 5, 1983) -----	7, 55, 58, 69, 76, 108, 130, 139, 205, 228
77 IBLA 96 (Nov. 14, 1983) -----	32, 206, 217	McKee, Ray & Cheryl, 73 IBLA 311 (June 7, 1983) -----	7, 55, 58, 69, 77, 108, 130, 139, 205, 228
Long, Harold L., 73 IBLA 280 (June 7, 1983) -----	7, 55, 58, 69, 77, 108, 130, 139, 205, 228	McLean, Ronald B., 77 IBLA 380 (Dec. 7, 1983) -----	3, 138, 203, 244, 245
Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983) -----	1, 167, 192	McManus, Marianne L., 70 IBLA 21 (Jan. 6, 1983) -----	144, 154

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
McMaster, Larry, <u>et al.</u> , 76 IBLA 370 (Oct. 25, 1983) -----4, 12, 14, 17, 62, 88, 123, 137, 203, 225, 244	Matuszak, David F., 70 IBLA 11 (Jan. 6, 1983) -----77, 107, 128
McMurtrie, Nancy, 73 IBLA 247 (June 2, 1983) -----148	Mayo, Charles & Marie G., 76 IBLA 107 (Sept. 21, 1983) -----7, 55, 58, 69, 77, 108, 130
McVey, L. Joe, 77 IBLA 374 (Dec. 7, 1983) -----14, 18, 217, 237	Meitler, R. R., Alfred Babineau, Hiel Crum, 70 IBLA 42 (Jan. 10, 1983) -----67, 109
Macdowell, Beverly J., Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983) -----155, 166, 167, 177, 191, 245	Melluzzo, Frank, 71 IBLA 178 (Mar. 10, 1983) -----2, 114, 126, 127, 134
Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983) -----7, 55, 59, 61, 73, 77, 108, 132, 221	Melsheimer, Juanita <u>v.</u> Ass't Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983), 90 I.D. 165 -----16, 28, 94, 98, 228
Maddox, Bill, J., 72 IBLA 22 (Apr. 4, 1983) -----174, 195	Memmott, Hal H., 77 IBLA 399 (Dec. 9, 1983) -----33, 34
Malech, Alfred E., 72 IBLA 223 (Apr. 26, 1983) -----78, 129	Mertle, Gary E., 73 IBLA 4 (May 5, 1983) -----70, 131
Maneotis Sheep Co., Resource Properties, Inc., 71 IBLA 312 (Mar. 22, 1983) -----30	Metcalf, Robert T. P. (Trust), 74 IBLA 252 (July 22, 1983) -----149, 152, 157, 178
Manga, Joseph C., 71 IBLA 187 (Mar. 10, 1983) -----105, 143, 171	Meyer, Henry J. & Doris A., Uniform Relocation Assis- tance Appeal of, 5 OHA 224 (Nov. 7, 1983) -----239
Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983) -----143, 172, 207	Mid-Continent Coal & Coke Co., 76 IBLA 312 (Oct. 19, 1983) -----32, 103
Marathon Oil Co. <u>et al.</u> , 78 IBLA 102 (Dec. 20, 1983) -----200	Millar, Gregg M., 74 IBLA 205 (July 18, 1983) -----123, 128, 135, 138, 223
Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983) -----12, 103, 227	Millard, Arthur & Mary Jane, 77 IBLA 66 (Nov. 7, 1983) -----234, 235
Martin, Juan, 71 IBLA 211 (Mar. 15, 1983) -----155, 177, 224	Milner, John, 76 IBLA 221 (Oct. 17, 1983) -----75, 112
Martin, Rudy, Appeal of, IBCA-1606-7-82 (Oct. 19, 1983) -----43, 45	Mineral Investigation & Develop- ment Co., 71 IBLA 398 (Mar. 31, 1983) -----64, 68, 109, 126
Martin, Williams & Judson, 74 IBLA 342 (July 28, 1983) -----152, 157, 164	Minerals Engineering Co., 71 IBLA 402 (Mar. 31, 1983) -----113
Mary Jane Associates, 74 IBLA 43 (June 27, 1983) -----148, 157, 178, 193	Minexco, Inc., 69 IBLA 379 (Jan. 4, 1983) -----66, 107
Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983) -----3, 50, 99, 229	Minkler, F. C., 71 IBLA 328 (Mar. 23, 1983) -----102, 104, 147, 169, 181, 236
Massirio, Joanne M. <u>v.</u> Western Hills Mining Ass'n <u>et al.</u> , 78 IBLA 155 (Dec. 29, 1983) -----114, 116, 120, 122, 127, 224, 229	Mitchell, Charles A., Sr., 77 IBLA 266 (Nov. 30, 1983) -----138
Mathews, David R., 74 IBLA 320 (July 28, 1983) -----73, 132	Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983) -----94, 214, 220, 221
Matthews Scientific Corp., 76 IBLA 280 (Oct. 18, 1983) -----100	Moncrief, Deborah B., 76 IBLA 287 (Oct. 18, 1983) -----158, 163

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Monroe, H. R., 75 IBLA 325 (Aug. 30, 1983) -----68, 77, 107, 130	Naylor, Bruce, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983) -----7, 55, 58, 69, 77, 108, 130
Montgomery, Norman, et al.; U.S. v., 75 IBLA 358 (Aug. 31, 1983) ----10, 12, 116, 122, 203, 223	Nelson, Charles W. & Lucy A., 75 IBLA 115 (Aug. 15, 1983) -----79, 211, 212
Montoya, F. F., 70 IBLA 93 (Jan. 11, 1983) -----61, 64	Nelson, Walter E. & Thomas C., 75 IBLA 269 (Aug. 26, 1983) -----68, 77, 107, 130
Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983) -----7, 55, 58, 73, 77, 108, 132	New Mexico Natural History Institute, 78 IBLA 133 (Dec. 29, 1983) -----84, 242
Morrison, Gene L., 77 IBLA 325 (Dec. 5, 1983) -----51, 52	New Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983) -----125, 133, 137
Morrison, Milton L., 75 IBLA 107 (Aug. 11, 1983) -----170	Newcomb, George P., 73 IBLA 104 (May 23, 1983) -----7, 55, 58, 69, 76, 108, 130
Morry, Billy, 72 IBLA 13 (Apr. 4, 1983) -----12, 15, 100, 101, 223	Nichols, Woodie, Estate of, 69 IBLA 382 (Jan. 4, 1983) -----7, 55, 58, 66, 76, 108, 128
Mosch Mining Co., 75 IBLA 153 (Aug. 18, 1983), 90 I.D. 382 -----64, 80	Nicholson, C. H., 75 IBLA 234 (Aug. 23, 1983) -----105, 183
Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983), 90 I.D. 181 -----229, 230, 231, 232	Nicholson Construction Co., Appeal of, IBCA-1711-8-83 (Nov. 30, 1983), 90 I.D. 494 -----43, 221
Murer, Christian F., 75 IBLA 232 (Aug. 23, 1983) -----26, 100, 202 78 IBLA 172 (Dec. 30, 1983) -----175, 176	Nicksic, Edward E., 75 IBLA 4 (Aug. 2, 1983) -----142, 165
Murphy, Nicholas J., 71 IBLA 368 (Mar. 28, 1983) -----68, 129, 139, 205, 228	Niece, Jack R. & Ruth V.; U.S. v., 77 IBLA 205 (Nov. 22, 1983) -----9, 116, 119, 122, 137
Naguib School of Sculpture, Inc. (The), Uniform Relocation Assistance Appeal of, 5 OHA 148 (Sept. 13, 1983) -----238	Niederer, William C., et al., 70 IBLA 55 (Jan. 10, 1983) -----58, 60, 67, 76, 107, 129
National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983) -----31, 32	Nilson, Barry C., 5 OHA 79 (Jan. 18, 1983) -----10, 27, 56, 62, 208, 215
National Public Lands Task Force, Nevada Outdoor Recreation Ass'n, Inc., 70 IBLA 214 (Jan. 24, 1983) -----5, 8, 65, 66, 204, 227	Nissley, Warren W., 73 IBLA 234 (May 31, 1983) -----148, 156, 178
Native Americans for Community Action v. Deputy Ass't Secre- tary--Indian Affairs (Opera- tions), 11 IBIA 214 (July 1, 1983), 90 I.D. 283 -----11, 36, 54, 63, 84, 91, 98, 206, 207	Noranda Exploration, Inc., 71 IBLA 9 (Feb. 10, 1983) -----102, 202
Navo, Githa T., 73 IBLA 277 (June 7, 1983) -----71, 77, 107, 130	Norsoph, Harold J., 78 IBLA 150 (Dec. 29, 1983) -----151, 176, 184
	Nortex Gas & Oil Co., 72 IBLA 379 (May 4, 1983) -----169, 174
	Northcutt, B. H., 75 IBLA 305 (Aug. 30, 1983) -----24, 29, 171, 217, 220
	Northern Minerals Co., Northern Coal Co., 71 IBLA 129 (Mar. 7, 1983) -----31, 102

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Northwest Exploration Co., 73 IBLA 123 (May 23, 1983) -----156, 178, 193	Osmer, Louis L., Jr., et al.; U.S. v., 76 IBLA 59 (Sept. 21, 1983) -----99, 100
Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983) -----27, 210, 211	Otter Slide Timber Sale, In re, 75 IBLA 380 (Aug. 31, 1983) -----201, 214, 236
Notestine, Tom, 73 IBLA 268 (June 7, 1983) -----182, 186, 244 73 IBLA 320 (June 7, 1983) -----64, 182, 227	Our Turn Now Ass'n, 77 IBLA 24 (Oct. 31, 1983) ----140, 158, 163, 205
NP Energy Corp., 72 IBLA 34 (Apr. 6, 1983) -----188, 197	Owens, Homer, 75 IBLA 335 (Aug. 30, 1983) -----10, 56, 59, 60, 74, 77, 112
Nucorp Energy, Inc., 73 IBLA 101 (May 23, 1983) -----1, 189, 198	Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983) -----25, 123, 126, 127
O'Brien, Anthony, 77 IBLA 154 (Nov. 16, 1983) -----5, 23, 203, 216	Owyhee Cattlemen's Ass'n, Idaho Board of Land Comm'rs, Idaho Cattle- men's Ass'n, 71 IBLA 4 (Feb. 10, 1983) -----65, 80, 240
O'Connell, R. K., Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983) -----190, 191, 199	Oxy Petroleum, Inc., 69 IBLA 357 (Jan. 3, 1983) -----154, 176
Odell, Phyllis H., 75 IBLA 313 (Aug. 30, 1983) -----82, 158, 183, 185, 241	Ozark-Mahoning Co., 74 IBLA 355 (July 28, 1983) -----101 76 IBLA 294 (Oct. 18, 1983) -----101
Offerle, R. W., 77 IBLA 80 (Nov. 9, 1983) -----2, 80, 212	Pacific Coast Molybdenum, In re, 75 IBLA 16 (Aug. 5, 1983), 90 I.D. 352 -----106, 119, 121, 123, 127, 201, 215, 224
Office of Surface Mining Reclamation & Enforcement; Harry Smith Construction Co. v., 78 IBLA 27 (Dec. 13, 1983) -----229, 230, 231, 232	Page Investment Co., 74 IBLA 163 (July 12, 1983) -----7, 55, 58, 72, 77, 108, 132, 140, 205, 228
Office of Surface Mining Reclamation & Enforcement; River Processing, Inc. v., 76 IBLA 129 (Sept. 26, 1983), 90 I.D. 425 -----230, 233	Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983) -----2, 3, 13, 16, 17, 243, 244
Ogden, Roger K., 77 IBLA 4 (Oct. 31, 1983), 90 I.D. 481 -----6, 51	Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983) -----152, 157, 162
Oliver, O. Glenn, 73 IBLA 56 (May 12, 1983) -----124, 136, 225, 244, 245	Paoluccio, Robert, II, et al., 70 IBLA 118 (Jan. 13, 1983) -----58, 60, 66, 76, 107, 128
Olson, D. M., 76 IBLA 344 (Oct. 24, 1983) -----150, 159, 163	Parsons, Wilbur R., 73 IBLA 6 (May 5, 1983) -----70, 110
Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983) -----9, 24, 29, 65, 80, 214, 217, 220	Pasak, John F., et al., 71 IBLA 334 (Mar. 28, 1983) -----123
Oregon, State of, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983) -----234, 235	Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983), 90 I.D. 10 -----5, 54, 63, 123, 203, 204, 225, 242, 243 (On Reconsideration), 76 IBLA 276 (Oct. 18, 1983) -----219
Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983) -----7, 8, 23, 63, 80, 200, 240	Patterson, Hank, 71 IBLA 109 (Feb. 28, 1983) -----90, 201
Ortman, Jack, 76 IBLA 200 (Oct. 6, 1983) ----150, 158, 163, 165	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Payne, Barbara, 73 IBLA 381 (June 15, 1983) -----140, 148, 205, 228	Pond Road Properties, 76 IBLA 330 (Oct. 20, 1983) -----150
Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983) -----1, 32, 93, 94	Pool, Eva M., et al.; U.S. v., 74 IBLA 37 (June 27, 1983) -----10, 116, 119, 121, 126, 137, 215
Pearson, Janice, 73 IBLA 220 (May 27, 1983) -----51, 52	Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983) -----124, 134, 137
Pebble Haulers, Inc., Appeal of, IBCA-1524-10-81 (Aug. 23, 1983) -----45, 47	Potter, Parke, 74 IBLA 397 (Aug. 2, 1983) -----7, 55, 58, 69, 77, 108, 130
IBCA-1524-10-81 (Sept. 28, 1983) -----218, 219	Pribble, Milford R., 75 IBLA 174 (Aug. 19, 1983) -----71, 77, 130
Pegasus Petroleum Corp., 71 IBLA 216 (Mar. 16, 1983) -----187, 196	Price, Glenn W.; Winegeart, Jessie L. v., 74 IBLA 373 (July 29, 1983), 90 I.D. 338 ----36, 89, 219, 224
Pekah, James Werny, Estate of, 11 IBIA 237 (July 6, 1983) -----8, 94, 97, 98, 227, 228	Prieto, Dora Joyce v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983) -----29, 91, 98, 228
Peterson, Carl A., 73 IBLA 347 (June 10, 1983) ----59, 156, 178, 193	Pringle, Chester L., 70 IBLA 254 (Jan. 25, 1983) -----145, 172, 181
Peterson, Harry C., 75 IBLA 195 (Aug. 22, 1983) -----166, 189, 199	Pritchard, Jerry M., 70 IBLA 154 (Jan. 18, 1983) -----4, 8, 23, 144, 145, 165, 181, 215
Petrolar Group (The), 77 IBLA 232 (Nov. 29, 1983) -----158	Provinse, David A., 76 IBLA 340 (Oct. 20, 1983) -----175, 183
Petrovest, Inc., 71 IBLA 250 (Mar. 21, 1983) -----169, 173	78 IBLA 85 (Dec. 16, 1983) -----2, 139, 184, 203, 214, 222, 234
76 IBLA 327 (Oct. 19, 1983) -----175, 183, 243	Pueblo of Laguna v. Ass't Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983), 90 I.D. 521 -----6, 8, 9, 13, 29, 206, 208, 224, 225
Pettijohn Engineering Co., Inc., Appeal of, IBCA-1346- 4-80 (May 26, 1983) -----37, 42, 44, 46, 56, 60	Pugh, Douglas A., 77 IBLA 126 (Nov. 15, 1983) -----183, 186
Phelps Dodge Corp., 76 IBLA 31 (Sept. 8, 1983) -----83, 241, 245	Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983) ----4, 63, 147, 161, 174, 182, 243
Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983) -----9, 23, 29, 81, 216, 219, 225	(On Reconsideration), 71 IBLA 360 (Mar. 28, 1983) -----174
Phillips Petroleum Co., 71 IBLA 105 (Feb. 25, 1983) -----187	Racquet Drive Estates, Inc. v. Deputy Ass't Secretary--Indian Affairs (Operations), 11 IBIA 184 (May 24, 1983), 90 I.D. 243 -----92, 93
Piatt, Robert W., 73 IBLA 244 (June 2, 1983) -----182	Raimonde Drilling Corp., Appeal of, IBCA-1359-5-80 (Feb. 14, 1983), 90 I.D. 69 -----39, 41, 43, 49
Pioneer Farmout #1, Ltd., 76 IBLA 250 (Oct. 17, 1983) -----153, 158	Rawlins, William B., 76 IBLA 165 (Sept. 27, 1983) -----143, 154
76 IBLA 337 (Oct. 20, 1983) -----150, 163, 176, 184	
Placid Oil Co., 76 IBLA 37 (Sept. 14, 1983) -----174	
P & O Falco, Inc., 78 IBLA 128 (Dec. 29, 1983) -----211, 213	
Pomerinke, Shirley, 74 IBLA 210 (July 18, 1983) ----71, 77, 107, 130, 140, 205, 228	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Read & Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983) -----141, 169, 173	R. M. Crum Construction Co., Appeal of, IBCA-1627-10-82 (June 22, 1983) -----37
72 IBLA 390 (May 5, 1983) -----170, 174	Robinson, Anita, 71 IBLA 380 (Mar. 29, 1983) -----12, 35, 79, 211, 212, 223
75 IBLA 121 (Aug. 15, 1983) -----170, 173	Rockwell, Leon H., et al., 72 IBLA 373 (May 4, 1983) -----26, 27, 79, 226
75 IBLA 349 (Aug. 31, 1983) -----170, 174	Rocky Mountain Exploration Co., 77 IBLA 15 (Oct. 31, 1983) -----156, 164
Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983) -----8, 82, 240, 245	Rodgers, Jean, et al., 5 OHA 178 (Sept. 19, 1983) -----62, 208
Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983) -----23, 141, 213, 216, 220.	Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983), 90 I.D. 401 -----38, 40, 41, 42, 46
Reese, Delbert A., 75 IBLA 74 (Aug. 10, 1983) -----73, 132	Rogers, Cletius G., 73 IBLA 1 (May 5, 1983) -----70, 109
Rehrig, Ann C., 69 IBLA 376 (Jan. 4, 1983) -----154	Rogers, Fredrick A., 75 IBLA 332 (Aug. 30, 1983) -----74, 112
Renwick, Richard W., 76 IBLA 57 (Sept. 19, 1983) -----146, 155	Rose, Ida Mae, Leo G. Comer, 73 IBLA 97 (May 23, 1983) -----18, 209, 217, 221
Resource Service Co., Inc., Bureau of Land Management; Geosearch, Inc., Lloyd Chemical Sales, Inc. v., 71 IBLA 138 (Mar. 9, 1983) -----12, 88, 155, 165, 222	Rosenberger, Mary Belen; U.S. v., 71 IBLA 195 (Mar. 14, 1983) -----114, 117, 120
Rex Mining Co., 73 IBLA 284 (June 7, 1983) -----7, 55, 58, 71, 77, 108, 131	Ross, James D. & Maria J., 72 IBLA 395 (May 5, 1983) -----4, 7, 35, 55, 58, 69, 76, 108, 131, 139, 205, 228
Rhinehart, C. G., 76 IBLA 228 (Oct. 17, 1983) -----64, 74, 77, 107, 114, 133	Ross, John A., Maxine Lidke, 73 IBLA 16 (May 5, 1983) -----12, 35, 106, 123, 136
Rhone, Kirk, 76 IBLA 332 (Oct. 20, 1983) -----153, 186	Rossi, Dale & Judy, 75 IBLA 262 (Aug. 26, 1983) -----7, 10, 55, 56, 59, 60, 69, 77, 111, 130
Rice, Lee H. & Goldie E.; U.S. v., 73 IBLA 128 (May 23, 1983) -----36, 100, 106, 115, 119, 121, 123, 221, 222, 223	Rouse, Michael J., 76 IBLA 183 (Oct. 3, 1983) -----74, 77, 107, 133
Rich, Edmund G., 75 IBLA 275 (Aug. 26, 1983) -----74, 77, 107, 133	Ruff, Larry E. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 11 IBIA 267 (Aug. 8, 1983) -----10, 95
Riding, Gerwin Blake, 70 IBLA 59 (Jan. 10, 1983) -----67, 76, 107, 129, 139, 205, 228	Russell, Jerald F. & Patricia K., 72 IBLA 28 (Apr. 5, 1983) -----23, 216, 220
Rieck, Georgene E. & William L., 76 IBLA 45 (Sept. 19, 1983) -----64, 80, 239	Rutter, A. W., Jr., 74 IBLA 345 (July 28, 1983) -----167, 168, 179, 185
Riley, Dearyl, 70 IBLA 33 (Jan. 7, 1983) -----78, 108, 125, 128	Ryan, Paul T., Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983) -----7, 55, 58, 73, 77, 108, 132, 140, 205, 228
River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983), 90 I.D. 425 -----230, 233	Sagar, Roy, Uniform Relocation Assistance Appeal of, 5 OHA 143 (Aug. 19, 1983) -----238

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
(Decisions starting with Saint (St.), see beginning of St's.)	Shears, Lydia Darlene, 76 IBLA 148 (Sept. 26, 1983) -----71, 77, 107, 130
Samson Resources Co., 71 IBLA 224 (Mar. 17, 1983) -----168, 187, 191, 196	Shelton, Joe E., 73 IBLA 250 (June 2, 1983) -----105, 143, 171
San Miguel Power Ass'n, Inc., 71 IBLA 213 (Mar. 16, 1983) -----79, 84, 212	Shinn, J. L., 74 IBLA 226 (July 18, 1983) -----71, 111
Sandvik, Gloria Ann, Judy Neff, 73 IBLA 82 (May 18, 1983) -----136, 205, 244	Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983) -----25, 124, 137, 138, 245
Santa Fe Pacific Railroad Co., 72 IBLA 197 (Apr. 19, 1983) -----2, 205	(On Reconsideration), 77 IBLA 261 (Nov. 30, 1983) -----6, 12, 25, 29, 35, 106, 125, 138, 214, 245
Sasselli, Cliff, 76 IBLA 8 (Sept. 6, 1983) -----74, 77, 107, 133	Shrider, Donald O., 70 IBLA 36 (Jan. 7, 1983) -----67, 108
Satellite Energy Corp., 77 IBLA 167 (Nov. 17, 1983), 90 I.D. 487 -----159, 164	Sierra Club, 71 IBLA 235 (Mar. 18, 1983) -----23, 216
Saulsberry, Les, 74 IBLA 223 (July 18, 1983) -----72, 77, 107, 132	Sierra Club - Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983) -----65, 82, 241
Scanapico, James A., 76 IBLA 290 (Oct. 18, 1983) -----158, 163, 179, 186	Simons, Lowell J., 70 IBLA 128 (Jan. 14, 1983) -----145, 184
Scarborough, Edwin (Edward) J. & Nora Scarborough Brignone, Estates of, 11 IBIA 179 (May 10, 1983) -----10, 96, 97	Singleton, W. G., 75 IBLA 168 (Aug. 19, 1983) -----127, 137, 138, 203
Schafer, Robert P., 71 IBLA 191 (Mar. 14, 1983) -----140, 185, 195	Skodras, Goldie, 72 IBLA 120 (Apr. 14, 1983) -----142, 147, 188, 214, 217, 224
Score International, 78 IBLA 142 (Dec. 29, 1983) ----24, 66, 204, 217, 220, 221, 227	Slater, Stanley L., 74 IBLA 357 (July 28, 1983) -----152
Scott, Paul R. & Betty F., 76 IBLA 143 (Sept. 26, 1983) -----34	Sloper, Josephine, 74 IBLA 234 (July 19, 1983) -----140, 154, 160, 205, 228
Scully, Leon F., Jr., 72 IBLA 96 (Apr. 13, 1983) -----152	Smelser, Homer v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983) -----86, 206, 207
75 IBLA 377 (Aug. 31, 1983) -----152	Smith, J. Bradley, 73 IBLA 398 (June 15, 1983) -----71, 111
Seals, Wilburn H., 71 IBLA 315 (Mar. 22, 1983) -----153, 161, 185	Smith, J. Neil, 77 IBLA 239 (Nov. 29, 1983) ----74, 77, 107, 133
Seattle Indian Center v. Acting Deputy Ass't Secre- tary--Indian Affairs (Operations), 12 IBIA 67 (Dec. 5, 1983), 90 I.D. 515 -----11, 90	Smith, Paul P., et al., 73 IBLA 336 (June 8, 1983) -----7, 55, 58, 69, 77, 108, 130
Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983) -----140, 184, 195	Smithson, Howard M., 70 IBLA 126 (Jan. 13, 1983) -----89
Seggerson, Edward, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983) -----139, 149, 183	Snider, Leonard E., Sr., 74 IBLA 213 (July 18, 1983) -----7, 55, 58, 69, 77, 108, 130
Shamrock Mining, Inc., 75 IBLA 110 (Aug. 11, 1983) ----73, 77, 107, 133	Sniffer #2 Partnership, 76 IBLA 362 (Oct. 24, 1983) -----78, 134
Shaw, O. J., et al., 75 IBLA 396 (Sept. 2, 1983) ----3, 4, 50, 99, 229	Snyder, Bernard R. & M. Marie, 70 IBLA 207 (Jan. 24, 1983) -----33, 34, 87, 218
Shaw Resources, Inc., 73 IBLA 291 (June 7, 1983) -----148, 156, 161	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
S.O.C. Oil Co., 73 IBLA 350 (June 14, 1983) -----165, 178	Stroock, Thomas F., 77 IBLA 137 (Nov. 15, 1983) ----4, 104, 105, 143, 171, 175, 196
SOCATS et al. (On Reconsidera- tion), 72 IBLA 9 (Apr. 4, 1983) -----53, 139	Styles, Stanley, Estate of, 75 IBLA 272 (Aug. 26, 1983) -----74, 77, 107, 133
Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983) -----3, 50, 64, 99, 229	Suazo, Pedro A. & Eleanor G., 75 IBLA 212 (Aug. 23, 1983) -----33, 34
Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983) -----9, 24, 52, 53, 81, 139	Suhrie, Gary T., 75 IBLA 9 (Aug. 2, 1983)-----23, 216, 220
Space Investors, 75 IBLA 183 (Aug. 22, 1983) -----143, 174, 183	Sunrise Construction Co., 73 IBLA 185 (May 26, 1983) -----88, 237
Spectrum Oil & Gas Co., 73 IBLA 162 (May 24, 1983) -----4, 166	Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co. & Sohio Shale Oil Co. (Inter- venors), 78 IBLA 68 (Dec. 16, 1983) -----61, 64, 89, 100
Sprague, Hugh, 73 IBLA 386 (June 15, 1983) -----7, 55, 58, 69, 77, 108, 130	Suto, Marie W., 73 IBLA 61 (May 12, 1983) -----1, 161
St. Clair, Donald, et al., 77 IBLA 283 (Nov. 30, 1983), 90 I.D. 496 -----229, 231, 232	Swan, Elmer A., et ux., 77 IBLA 99 (Nov. 14, 1983) -----6, 13, 88, 223, 224, 234, 235
State of Alaska, 70 IBLA 369 (Feb. 3, 1983) -----23, 216, 220	Swanberg, Nels & Margaret, 74 IBLA 249 (July 22, 1983) -----124, 201
71 IBLA 256 (Mar. 21, 1983) -----20, 21, 60, 88	Taffera, Carl J., 71 IBLA 72 (Feb. 22, 1983) -----36, 167, 173, 195, 225
71 IBLA 394 (Mar. 30, 1983) -----15	Tako Mining (On Reconsideration), 77 IBLA 30 (Oct. 31, 1983) -----219
74 IBLA 275 (July 25, 1983) -----19, 21	Talbert, Richard S., 70 IBLA 145 (Jan. 17, 1983) -----160, 165
State of Alaska v. Thorson, Marcia K.; State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983) -----15, 17, 22	Tanalian, Inc., et al., 75 IBLA 316 (Aug. 30, 1983) -----19, 20
State of Alaska, Matrona Johnson, 71 IBLA 63 (Feb. 22, 1983) -----15	Tarantino, Frank J., 77 IBLA 328 (Dec. 5, 1983) -----76, 134
State of Oregon, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983) -----234, 235	Tenneco Oil Co., 71 IBLA 339 (Mar. 28, 1983) -----187, 197
Stevenson, James C., 77 IBLA 150 (Nov. 15, 1983) -----179, 186	Thompson, Fred, 74 IBLA 231 (July 19, 1983) ----14, 124, 137, 245
Stevenson, William A., Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (June 7, 1983) -----140, 185, 195	Thorn Construction Co., Inc., Appeal of, IBCA-1254-3-79 (Jan. 27, 1983), 90 I.D. 21 -----38, 40, 44, 47
Stewart, Hampton P., 72 IBLA 358 (May 2, 1983) -----147, 154, 159, 177, 184	Thorson, Marcia K.; State of Alaska v.; State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983) -----15, 17, 22
Stoelting, Thomas, et al., 70 IBLA 231 (Jan. 25, 1983) -----117, 125, 129, 135	Thouez, Katherine C., 69 IBLA 391 (Jan. 4, 1983) -----142, 171, 207
Stonecipher, Elmer T., 71 IBLA 203 (Mar. 14, 1983) -----1, 155, 160, 207	Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983) -----71, 77, 107, 130
	Thumpers Reforestation, Appeal of, IBCA-1576-5-82 (Jan. 31, 1983) -----42, 48

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Tibbals Construction, Inc., Appeal of, IBCA-1618-9-82 (Nov. 4, 1983) -----43, 221	TXO Production Corp., 73 IBLA 33 (May 9, 1983) -----180, 192 73 IBLA 258 (June 7, 1983) -----169, 173
Tickel, Charles R., 73 IBLA 360 (June 15, 1983), 90 I.D. 258 -----152, 157, 161	Tyee Tree Nursery, Appeal of, IBCA-1628-10-82 (Aug. 17, 1983) -----42
Tieyah, Julia, Estate of, 11 IBIA 211 (June 8, 1983) -----97	Tyrex Oil Co., 73 IBLA 241 (June 1, 1983) ----142, 161, 178, 185
Titus, Walter (On Reconsid- eration), 77 IBLA 321 (Dec. 1, 1983) -----8, 13, 15, 16, 88, 223	<u>U N I F O R M R E L O C A T I O N O F:</u>
T & M Corp., Larry G. McLatchy, 70 IBLA 366 (Feb. 3, 1983) -----190, 200	Uniform Relocation Assistance Appeal of Cochran, H. M. & Leola, 5 OHA 221 (Nov. 3, 1983) -----237
Tooze, Arthur A., 74 IBLA 221 (July 18, 1983) -----72, 111	Uniform Relocation Assistance Appeal of Eastern Pennsylvania Lutheran Camp Corp., 5 OHA 201 (Oct. 4, 1983) -----238
Trahan, J. C., 74 IBLA 15 (June 24, 1983) -----5, 23, 203, 216	Uniform Relocation Assistance Appeal of Harmon, Forrest L. (Mr. & Mrs.), 5 OHA 96 (Feb. 25, 1983) -----238, 239
Transwestern Pipeline Co. v. Acting Deputy Ass't Secre- tary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983), 90 I.D. 474 -----29, 94, 98, 208, 211, 229	Uniform Relocation Assistance Appeal of Heffner, Donald D., 5 OHA 168 (Sept. 15, 1983) -----238
Travis, Donald H., Uniform Relocation Assistance Appeal of, 5 OHA 212 (Oct. 21, 1983) -----239	Uniform Relocation Assistance Appeal of Hollis, Virgil S. (Mr.), 5 OHA 104 (Mar. 15, 1983) -----238
Traylor, Horace, II, et al., Appeal of, 5 OHA 117 (Mar. 22, 1983) -----62, 209	Uniform Relocation Assistance Appeal of Hosay, Philip M. & Cynthia K., 5 OHA 175 (Sept. 15, 1983) -----237
Trigg, John H., 74 IBLA 52 (June 28, 1983) -----203 74 IBLA 246 (July 19, 1983) -----25, 149, 178	Uniform Relocation Assistance Appeal of Karth, George E. (President), Ochopee L P Gas Co., Inc., 5 OHA 93 (Feb. 14, 1983) -----239
Trujillo, Rosita, 77 IBLA 35 (Oct. 31, 1983) -----166, 167, 218	Uniform Relocation Assistance Appeal of Knox, Donald E. & Kenneth A., 5 OHA 87 (Feb. 9, 1983) -----237
Trust, Eugene R., Estate of v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983) -----92, 94, 95, 96	Uniform Relocation Assistance Appeal of Kurtz, Gregory P. (President), Kurtz Brothers, Inc., 5 OHA 84 (Jan. 20, 1983) -----237
Tseng, James H. W., 69 IBLA 387 (Jan. 4, 1983) -----5, 54, 99, 144, 176, 181	Uniform Relocation Assistance Appeal of Lang-Miller, 5 OHA 205 (Oct. 4, 1983) -----238, 239
Tsoodle, Samuel, Estate of, 11 IBIA 163 (Apr. 14, 1983) -----97	Uniform Relocation Assistance Appeal of Meyer, Henry J. & Doris A., 5 OHA 224 (Nov. 7, 1983) -----239
T & T Development Co., 77 IBLA 54 (Nov. 7, 1983) -----164	
Tuttle, Thomas L., 71 IBLA 265 (Mar. 22, 1983) -----5, 23, 203, 216	
Two Bulls, Richard Doyle, Estate of, 11 IBIA 77 (Mar. 15, 1983) -----94, 95, 96	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Uniform Relocation Assistance Appeal of (The) Naguib School of Sculpture, Inc., 5 OHA 148 (Sept. 13, 1983) -----238	U.S. v. Jones, T. J. & Robert E., 72 IBLA 52 (Apr. 12, 1983) -----56, 115, 118, 121, 123, 136
Uniform Relocation Assistance Appeal of Sagar, Roy, 5 OHA 143 (Aug. 19, 1983) -----238	U.S. v. Laczkowski, Joseph & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983) ----12, 36, 115, 118, 122, 222
Uniform Relocation Assistance Appeal of Travis, Donald H., 5 OHA 212 (Oct. 21, 1983) -----239	U.S. v. Montgomery, Norman, et al., 75 IBLA 358 (Aug. 31, 1983) -----10, 12, 116, 122, 203, 223
Uniform Relocation Assistance Appeal of Valcanoff, Robert (Mr. & Mrs.), 5 OHA 180A (Sept. 28, 1983) -----237, 239	U.S. v. Niece, Jack R. & Ruth V., 77 IBLA 205 (Nov. 22, 1983) -----9, 116, 119, 122, 137
Uniform Relocation Assistance Appeal of Whiteco Metrocom, 5 OHA 166 (Sept. 14, 1983) -----238	U.S. v. Osmer, Louis L., Jr., et al., 76 IBLA 59 (Sept. 21, 1983) -----99, 100
Union Oil Co. of California, 77 IBLA 32 (Oct. 31, 1983) -----168, 199	U.S. v. Pool, Eva M., et al., 74 IBLA 37 (June 27, 1983) -----10, 116, 119, 121, 126, 137, 215
United Indians of All Tribes Foundation v. Acting Deputy Ass't Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983) -----6, 90, 91, 206, 207, 208	U.S. v. Rice, Lee H. & Goldie E., 73 IBLA 128 (May 23, 1983) -----36, 100, 106, 115, 119, 121, 123, 221, 222, 223
(On Reconsideration), 11 IBIA 276 (Aug. 15, 1983), 90 I.D. 376 -----91, 207	U.S. v. Rosenberger, Mary Belén, 71 IBLA 195 (Mar. 14, 1983) -----114, 117, 120
<u>U N I T E D S T A T E S V E R S U S :</u>	U.S. v. Walper, James A., 77 IBLA 90 (Nov. 14, 1983) -----59, 61, 116, 119, 122
U.S. v. Arbo, Richard S., 70 IBLA 244 (Jan. 25, 1983) -----11, 55, 56, 57, 87, 114, 117, 120, 122, 221	U.S. v. Wells, Albert J., 69 IBLA 363 (Jan. 3, 1983) -----120
U.S. v. Cannon, Florence, 70 IBLA 328 (Feb. 1, 1983) -----56, 114, 117, 120, 122	* * * * *
U.S. v. Chappell, William Lavon, et al., 72 IBLA 88 (Apr. 13, 1983) -----10, 115, 118, 121, 136, 225, 244	U.S. Fidelity & Guaranty Co., Surety for Frank Rivera, Inc., IBCA-1645- 12-82 (June 10, 1983) -----43
U.S. v. Connor et al., 72 IBLA 254 (Apr. 27, 1983) -----10, 23, 56, 60, 106, 118, 121, 215, 220, 221	U.S. Fish & Wildlife Ser- vice, 72 IBLA 218 (Apr. 25, 1983) -----7, 9, 13, 21, 23, 57, 141, 224, 225
U.S. v. Cook, Lyle O., et al., 71 IBLA 268 (Mar. 22, 1983) -----51, 115, 117, 120	U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983) -----11, 27, 35, 79, 88, 206, 210
U.S. v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983) -----8, 13, 54, 61, 114, 116, 119, 122, 222	United Ventures, 74 IBLA 31 (June 24, 1983) -----140, 148, 152, 178, 205
U.S. v. Feezor, J. Gary, et al., 74 IBLA 56 (June 29, 1983), 90 I.D. 262 -----116, 122, 213	UOP, Inc., 74 IBLA 54 (June 29, 1983) -----101
	Urban Indian Council, Inc. v. Acting Deputy Ass't Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983) -----10, 28, 30, 90, 91

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Ustan, Stanley, 71 IBLA 116 (Mar. 2, 1983) -----146, 167, 177, 181, 184	Walker, Richard Evans, Estate of, 12 IBIA 44 (Oct. 28, 1983) -----8, 13, 95, 141, 206, 207, 208
Utah Wilderness Ass'n et al., 72 IBLA 125 (Apr. 18, 1983) -----81, 240	Wall, Irvin, 69 IBLA 371 (Jan. 3, 1983) -----144, 176
Ute Mountain Ute Tribe v. Acting Ass't Secretary for Indian Affairs, 11 IBIA 168 (Apr. 19, 1983), 90 I.D. 169 -----29	70 IBLA 183 (Jan. 20, 1983), 90 I.D. 3 -----144, 145, 153, 165, 171, 177, 181
Vaden, Henrietta Roberts, 70 IBLA 171 (Jan. 20, 1983) -----14, 17, 225	71 IBLA 209 (Mar. 15, 1983) -----146, 177
Valcanoff, Robert (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 5 OHA 180A (Sept. 28, 1983) -----237, 239	71 IBLA 349 (Mar. 28, 1983) -----147, 177
Vaughan, Jessie Neal, 76 IBLA 146 (Sept. 26, 1983) -----165	76 IBLA 186 (Oct. 3, 1983) -----150, 177
Veal, Harry K., 73 IBLA 86 (May 18, 1983) -----140, 185, 195	Walper, James A.; U.S. v., 77 IBLA 90 (Nov. 14, 1983) -----59, 61, 116, 119, 122
Vigil, Corrine M., 74 IBLA 111 (June 30, 1983) -----33, 34	Walsh, Suzanne, 75 IBLA 247 (Aug. 24, 1983) -----170, 173
Viking Resources Corp., 77 IBLA 57 (Nov. 7, 1983) -----170, 174	Ware, Worth D. & Gayl L., 74 IBLA 256 (July 22, 1983) -----143, 179, 185
Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983) -----2, 13, 15, 24, 26, 88, 217, 220, 223	Waterfield, Henry W., 77 IBLA 270 (Nov. 30, 1983) -----11, 18, 21, 215
Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983), 90 I.D. 1 -----229, 232	Wells, Albert J; U.S. v., 69 IBLA 363 (Jan. 3, 1983) -----120
Vogler, Joseph E., Doris L. & Dwerl, 72 IBLA 48 (Apr. 12, 1983) -----136, 243	Welpet Energy, L. P., 75 IBLA 55 (Aug. 5, 1983) -----203
Wakon Redbird & Associates, Appeal of, IBCA-1682-6-83 (Sept. 30, 1983), 90 I.D. 441 -----43, 48, 217	Wentworth, Florence, 72 IBLA 248 (Apr. 27, 1983) -----105, 143, 171
Walch Logging Co., Inc., Dant & Russell, Inc. v. Ass't Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983), 90 I.D. 88 -----9, 55, 58, 60, 92	Wert, Lawrence M., 75 IBLA 186 (Aug. 22, 1983) -----65, 82, 149, 174
12 IBIA 126 (Dec. 22, 1983) -----219	Western Hills Mining Ass'n et al.; Massirio, Joanne M. v., 78 IBLA 155 (Dec. 29, 1983) -----114, 116, 120, 122, 127, 224, 229
Walck, Eugene W., Jr., 72 IBLA 30 (Apr. 5, 1983) -----58, 60, 66, 76, 107, 128	Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983) -----171, 173, 181, 195, 204, 243
Wales, Agnes, Appeal of, 5 OHA 215 (Oct. 26, 1983) -----63, 209	White, Larry, 72 IBLA 242 (Apr. 27, 1983) -----169, 173
Walker, Dan, 74 IBLA 153 (July 12, 1983) -----72, 131	White Rose Corp., 72 IBLA 80 (Apr. 13, 1983) -----58, 60, 68, 76, 107, 129
	White Sands Forest Products, Inc. v. Acting Deputy Ass't Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983), 90 I.D. 396 -----42, 91, 92
	Whiteco Metrocom, Uniform Relocation Assistance Appeal of, 5 OHA 166 (Sept. 14, 1983) -----238

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Whitehurst, Albert, 70 IBLA 168 (Jan. 19, 1983) -----152, 160	Yates, D. M., 70 IBLA 134 (Jan. 14, 1983) -----5, 54, 99, 145, 152, 160, 166, 177
Wickenden, Robert J., 73 IBLA 394 (June 15, 1983) -----233, 234	70 IBLA 240 (Jan. 25, 1983) -----84, 181, 242
Wilkinson, George M., 70 IBLA 1 (Jan. 6, 1983) -----85	71 IBLA 126 (Mar. 7, 1983) -----173, 181, 242
Willey, Helen Ward, Estate of, 11 IBIA 43 (Jan. 31, 1983) -----96, 97	73 IBLA 353 (June 14, 1983) -----84, 182, 186, 242
Willkens, Donald Ernest, 77 IBLA 144 (Nov. 15, 1983) -----105, 144, 171	74 IBLA 8 (June 4, 1983) -----174, 182, 242
Wilson, Suellen Gay Stewart, 70 IBLA 165 (Jan. 19, 1983) -----25, 89	74 IBLA 18 (June 24, 1983) -----148, 193
Winegeart, Jessie L. v. Price, Glenn W., 74 IBLA 373 (July 29, 1983), 90 I.D. 338 -----36, 89, 219, 224	74 IBLA 23 (June 24, 1983) -----173, 181, 242
Withycombe, James H., 72 IBLA 5 (Apr. 4, 1983) -----188, 191, 197	74 IBLA 159 (July 12, 1983) -----37, 168, 174, 182, 242
Witmer, James Philip, Estate of, 77 IBLA 361 (Dec. 7, 1983) -----159, 194	76 IBLA 208 (Oct. 11, 1983) -----105, 168, 183
Wolf, Jerry W., 70 IBLA 131 (Jan. 14, 1983) -----160, 176, 184, 190	Yonich, Gladys, Doris L. Hartley, 74 IBLA 285 (July 25, 1983) -----26, 79, 226
Woodworth, J. Garth, 78 IBLA 112 (Dec. 22, 1983) -----107	Youngblood, Frank M., 78 IBLA 162 (Dec. 30, 1983) -----167
Wyatt, Joseph, Estate of, 11 IBIA 244 (July 15, 1983) -----95, 96	Zacher, Henry G., 77 IBLA 1 (Oct. 31, 1983) -----76, 77, 107, 134
Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983) -----165, 213, 219, 220	Zamarello, Peter, 71 IBLA 39 (Feb. 16, 1983) -----180
	Zarr, Diane v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983), 90 I.D. 172 -----9, 29, 35, 98, 205, 216
	Zimmerman, Charles T., 75 IBLA 6 (Aug. 2, 1983) -----149, 162

* * * * *

Tables of Opinions Reported

<u>Page(s)</u>
Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 2 1983), 90 I.D. 345 -----211, 212
Federal Water Pollution Control Act--Sec. 404 Compliance for Projects Funded in Part by State & Local Entities, M-36915 (Supp. I) (June 2, 1983), 90 I.D. 255 -----30, 139, 239
Orem Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983), 90 I.D. 223 -----23, 118, 126, 127, 236
Purposes of Executive Order of Apr. 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II) (Feb. 16, 1983), 90 I.D. 81 -----239, 245

TABLE OF OVERRULED AND MODIFIED CASES FOR
THE DEPARTMENT OF THE INTERIOR

For judicial modification and reversals see
Table of Suits for Judicial Review.

- Ahvakana, Lucy S., 3 IBLA 341 (1971); overruled to extent inconsistent, *U.S. v. Flynn*, 53 IBLA 208, 88 I.D. 373 (1981).
- Alabama By-Products Corp., 6 IBMA 168, 1975-1976 OSHD par. 20,756 (1976); set aside, 7 IBMA 85, 83 I.D. 574 (1976).
- Alakayak, Macauley, Heirs of, 23 IBLA 170 (1975); vacated, (On Recon.), 62 IBLA 90 (1982).
- Alaska Railroad, Appeal of, 3 ANCAB 273, 86 I.D. 397 (1979); affirmed in part, vacated in part, 3 ANCAB 351, 86 I.D. 452 (1979).
- Alaska Railroad, Appeal of, 3 ANCAB 280 (1979); affirmed in part, modified in part, 3 ANCAB 377 (1979).
- Alaska, State of, 7 ANCAB 157, 89 I.D. 321 (1982); modified to the extent inconsistent, 67 IBLA 344 (1982).
- Alaska, State of & Seldovia Native Ass'n, Inc., Appeals of, 2 ANCAB 1, 84 I.D. 349 (1977); modified, Solicitor's Opinion--Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016 (Dec. 14, 1977), 85 I.D. 1 (1978).
- Alexander, William T., 21 IBLA 56 (1975); reaffirmed as modified, *U.S. v. Alexander*, 41 IBLA 1 (1979).
- Amanda Mining & Manufacturing Ass'n, 42 IBLA 144 (1979); overruled to extent inconsistent, *Harvey A. Clifton et al.*, 60 IBLA 29 (1981).
- American Telephone & Telegraph Co., 57 IBLA 215 (1981); modified in part, (On Recon.), 59 IBLA 343 (1981).
- Amoco Production Co., 24 IBLA 227 (1976); vacated, (On Recon.), 35 IBLA 43 (1978).
- Anahonak, Victor A., 21 IBLA 347 (1975); vacated, (On Recon.), 64 IBLA 289 (1982).
- Anderson, Ida Lee, 70 IBLA 383 (1983); vacated, (On Recon.), 73 IBLA 223 (1983).
- Anelon, Gregory, Sr., 21 IBLA 230 (1975); vacated, (On Recon.), 60 IBLA 101 (1981).
- Anelon, Serafina, 22 IBLA 104 (1975); vacated, (On Recon.), 64 IBLA 97 (1982).
- Angaiak, Catherine, 23 IBLA 91 (1975); vacated & remanded, (On Recon.), 65 IBLA 317 (1982).
- Applicability of Montana Tax to Oil & Gas Leases of Ft. Peck Lands--Opinion of Ass't Secretary (Oct. 27, 1966); superseded to the extent inconsistent, Solicitor's Opinion--Tax Status of the Production of Oil & Gas from Leases of the Fort Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Archer, J. D., A-30750 (May 31, 1967); overruled, 79 I.D. 416 (1972).
- Aspinwall, Mary A. A., 23 IBLA 309 (1976); sustained in part & vacated in part, (On Recon.), 66 IBLA 367 (1982).
- Ayouiak, Mary, 22 IBLA 384 (1975); vacated, (On Recon.), 59 IBLA 384 (1981).
- Barash, Max, 63 I.D. 51 (1956); overruled in part, Solicitor's Opinion--Issuance of Noncompetitive Oil & Gas Leases on Lands Within the Geologic Structures of Producing Oil or Gas Fields, M-36686, 74 I.D. 285 (1967); Permian Mud Service, Inc., 31 IBLA 150, 84 I.D. 342 (1977).
- Bartel, John A., A-29664 (Oct. 11, 1962); distinguished, A-30129 (Nov. 9, 1964).
- Bergman, Elsie, 23 IBLA 233 (1975); vacated, (On Recon.), 64 IBLA 180 (1982).
- Bergman, Steven, 22 IBLA 233 (1975); vacated, (On Recon.), 61 IBLA 399 (1982).
- Bergman, Warner, 21 IBLA 173 (1975), 31 IBLA 21 (1977); vacated, (On Recon.), 60 IBLA 214 (1981).
- Beveridge, R. C., 50 IBLA 173 (1980); distinguished, Curtis Wheeler, 62 IBLA 384 (1982).
- Breene, James O., Jr., 38 IBLA 281 (1978); vacated, (On Recon.), 42 IBLA 395 (1979).
- Brick, Irving B., 36 IBLA 235 (1978); overruled, Robert R. Furman, 49 IBLA 64 (1980).
- Brinton, John C., Estate of, 25 IBLA 283 (1976); vacated in part, 71 IBLA 160 (1983).
- Caldwell, Clair R., 42 IBLA 139 (1979); overruled to extent inconsistent, *Harvey A. Clifton et al.*, 60 IBLA 29 (1981).
- California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979); overruled, Kaiser Steel Corp. *et al.*, 63 IBLA 363 (1982).
- Caress, Charles, 41 IBLA 302 (1979); overruled to extent inconsistent, *Harvey A. Clifton et al.*, 60 IBLA 29 (1981).
- Chesebrough, Samuel A., 49 IBLA 249 (1980); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).
- Chiskok, Evan, *et al.*, 22 IBLA 153 (1975); vacated, (On Recon.), 61 IBLA 1 (1981).
- Clipper Mining Co., 22 L.D. 527 (1896); no longer followed in part, 67 I.D. 417 (1960).

Table of Overruled and Modified Cases

- Clipper Mining Co., *The v. The Eli Mining & Land Co. et al.*, 33 L.D. 660 (1905); no longer followed in part, 67 I.D. 417 (1960).
- Computation of Royalty under Sec. 15, 51 L.D. 283 (1925); overruled, Solicitor's Opinion--Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, & Outer Continental Shelf Lands Act Royalty Clause, M-36888, 84 I.D. 54 (1977).
- Continental Oil Co., 68 I.D. 186 (1961); overruled in pertinent part, Solicitor's Opinion, M-36921, 87 I.D. 291 (1980).
- Continental Oil Co., 74 I.D. 229 (1967); distinguished, Solicitor's Opinion, M-36927, 87 I.D. 616 (1980).
- Coupey, Paul S., 33 IBLA 177 (1977); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).
- Cranston, Monty, 67 IBLA 364 (1982); overruled to extent inconsistent, Pandora Petroleum Co., 74 IBLA 173 (1983).
- Cupper, Jerry, 45 IBLA 215 (1980); overruled to extent inconsistent, Harvey A. Clifton *et al.*, 60 IBLA 29 (1981).
- Davidson, Robert A., 13 IBLA 368 (1973); overruled to extent inconsistent, J. Burton Tuttle, 49 IBLA 278, 87 I.D. 350 (1980).
- Debord, Wayne E., 50 IBLA 216, 87 I.D. 465 (1980); modified, 54 IBLA 61 (1981).
- Eakon, Hilma, 22 IBLA 41 (1975); vacated, (On Recon.), 64 IBLA 97 (1982).
- Eastern Associated Coal Corp., 3 IBMA 331, 81 I.D. 567, 1974-1975 OSHD par. 18,706 (1974); overruled in part, Alabama By-Products Corp. (On Recon.), 7 IBMA 85, 83 I.D. 574 (1976); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).
- Eastern Associated Coal Corp., 5 IBMA 185, 82 I.D. 506, 1975-1976 OSHD par. 20,041 (1975); set aside in part, (On Recon.), 7 IBMA 14, 83 I.D. 425 (1976).
- Eckels, Richard W., 62 IBLA 1 (1982); modified, (On Recon.), 65 IBLA 76 (1982).
- Eklutna, Appeal of, 1 ANCAB 190, 83 I.D. 619 (1976); modified, Solicitor's Opinion--Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016 (Dec. 14, 1977), 85 I.D. 1 (1978).
- Energy Partners, 21 IBLA 352 (1975); distinguished, Chevron Oil Co., 32 IBLA 275 (1977).
- Engelhardt, Daniel A., 61 IBLA 65 (1981); set aside, (On Recon.), 62 IBLA 93, 89 I.D. 82 (1982).
- Esplin, Lee J., 56 I.D. 325 (1938); overruled to extent it applies to 1926 Executive Order to artificially developed water sources on the public lands, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979)--Federal Water Rights of the National Park Service, Fish & Wildlife Service, Bureau of Reclamation & the Bureau of Land Management.
- Federal-American Partners, 37 IBLA 330 (1978); overruled to extent inconsistent, Zula C. Brinkerhoff, 75 IBLA 179 (1983).
- Freeman *v.* Summers, 52 L.D. 201 (1927); overruled, *U.S. v. Winegar*, 16 IBLA 112, 81 I.D. 370 (1974); reinstated, *U.S. v. Bohme*, 51 IBLA 97, 87 I.D. 535 (1980).
- Freeman Coal Mining Co., 3 IBMA 434, 81 I.D. 723, 1974-1975 OSHD par. 19,177 (1974); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).
- Fults, Bill, 61 I.D. 437 (1905); overruled, 69 I.D. 181 (1962).
- Garrett, Fred M., 66 IBLA 49 (1982); overruled to extent inconsistent, Pandora Petroleum Co., 74 IBLA 173 (1983).
- General Electric Co., 55 IBLA 185 (1981); overruled to extent inconsistent, 56 IBLA 327 (1981).
- Gifford, Samuel Lee, 53 IBLA 23 (1981); modified insofar as it set aside & remanded in part an Indian allotment application, (On Recon.), 55 IBLA 1 (1981).
- Glassford, A. W., *et al.*, 56 I.D. 88 (1937); overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).
- Gosuk, Jack, 22 IBLA 392 (1975); vacated, (On Recon.), 54 IBLA 306 (1981).
- Gray, Eleanor A., *et al.*, A-28710 (May 18, 1962); vacated as to Claim No. 4, A-28710 (Supp.) (May 7, 1964).
- Hagood, L. N., *et al.*, 65 I.D. 405 (1958); overruled, Beard Oil Co., 77 I.D. 166 (1970).
- Hanlon, Christina Lavern, 23 IBLA 36 (1975); vacated, Andrew Gordon McKinley (On Recon.), 61 IBLA 282 (1982).
- Hays, Alice, 36 IBLA 313 (1978); distinguished, Curtis Wheeler, 62 IBLA 384 (1982).
- Holbeck, Halvor F., A-30376 (Dec. 2, 1965); overruled, 79 I.D. 416 (1972).
- Hunt, Emily B., 23 IBLA 205 (1976); vacated, (On Recon.), 64 IBLA 304 (1982).
- Idaho Dept. of Water Resources, 32 IBLA 89 (1977); vacated, (On Recon.), 49 IBLA 221 (1980).

Table of Overruled and Modified Cases

- Jaycox, Myrtle, 22 IBLA 324 (1975); vacated, (On Recon.), 64 IBLA 97 (1982).
- Johansen, Daniel, 23 IBLA 292 (1976); vacated, (On Recon.), 54 IBLA 295 (1981).
- Keating Gold Mining Co., Montana Power Co. (Transferee) 52 I.D. 671 (1929); overruled in part, Arizona Public Service Co., 5 IBLA 137, 79 I.D. 67 (1972).
- Keller, Herman A., 14 IBLA 188, 81 I.D. 26 (1974); distinguished, Robert E. Belknap, 55 IBLA 200 (1981).
- Kenyon, Stephen, et al., 51 IBLA 368 (1980); vacated in part, (On Recon.), 65 IBLA 44 (1982).
- Kern County Land Co. (On Recon.), IA-0168748, IA-0170927, & IA-0170928; approved by Under Secretary Carver, Oct. 25, 1965; will not be followed to the extent that it is inconsistent with this opinion.
- Kerr-McGee Nuclear Corp. et al., 41 IBLA 197 (1979); rev'd, (On Recon.), 43 IBLA 348 (1979).
- Kight, W. Verne, 47 IBLA 351 (1980); rev'd in part, (On Recon.), 61 IBLA 216 (1982).
- Konukpeok, Nora E., 23 IBLA 86 (1975); vacated, (On Recon.), 60 IBLA 394 (1981).
- L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81, 90 I.D. 322 (1983); vacated & appeal dismissed, (On Recon.), IBCA-1511-9-81, 90 I.D. 491 (1983).
- Land Classification State of California, A-31022 (Aug. 14, 1968 & Jan. 23, 1969); overruled to extent inconsistent, A-31022 (Oct. 14, 1969), as amended (Oct. 27, 1969).
- Layne & Bowler Export Corp., IBCA-245, 68 I.D. 33 (1961); overruled insofar as it conflicts, Schweigert, Inc. v. U.S., Ct. Cl. No. 26-66 (Dec. 15, 1967), & Galland-Henning Manufacturing Co., IBCA-534-12-65 (Mar. 29, 1968).
- Liability of Indian Tribes for State Taxes Imposed on Royalty Received from Oil & Gas Leases, 58 I.D. 535 (1943); superseded to extent inconsistent, Solicitor's Opinion--Tax Status of the Production of Oil & Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Lindgren, Sarah F., 23 IBLA 174 (1975); vacated, (On Recon.), 54 IBLA 181 (1981).
- Liss, Merwin E., 67 I.D. 385 (1960); overruled, Arthur E. Meinhardt, 11 IBLA 139, 80 I.D. 395 (1973).
- Luke, Louise, 22 IBLA 388 (1975); vacated, (On Recon.), 60 IBLA 399 (1981).
- Luse, Jeanette L., et al., 61 I.D. 103 (1953); distinguished, Richfield Oil Corp., 71 I.D. 243 (1964).
- Lynn, Robert G., 70 IBLA 141 (1983); vacated, (On Recon.), 73 IBLA 288 (1983).
- Lytle, Frank C., III, 69 IBLA 210 (1982); overruled to extent inconsistent, L. Lee Horschman, 74 IBLA 360 (1983).
- Manzonie, John & Adellie, I.G.D. 615; distinguished, A-29334 (July 26, 1963).
- Martin, Wilbur, Sr., A-25862 (May 31, 1950); overruled to extent inconsistent, U.S. v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).
- Mead, Robert E., 61 I.D. 111 (1955); overruled, Jones-O'Brien, Inc., 85 I.D. 89 (1978).
- Merritt-Chapman & Scott Corp., IBCA-257 (June 22, 1961); distinguished, IBCA-274 (Sept. 15, 1961).
- Mertz, Dennis J., 43 IBLA 302 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).
- Mezey, Cliff, 50 IBLA 157 (1980); vacated, (On Recon.), 66 IBLA 178 (1982).
- Mikesell, Henry D., A-24112 (Mar. 11, 1946); rehearing denied (June 20, 1946); overruled to extent inconsistent, 70 I.D. 149 (1963).
- Miller, Duncan, A-29760 (Sept. 18, 1963); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, A-30742 (Dec. 2, 1966); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, A-30722 (Apr. 14, 1967); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, 6 IBLA 283 (1972); overruled to the extent inconsistent, Jones-O'Brien, Inc., 85 I.D. 89 (1978).
- Minnier, Willene, 45 IBLA 1 (1980); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).
- Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); limited in effect, Carl Gerard, 70 IBLA 343 (1983).
- Morgan, Henry S., et al., 65 I.D. 369 (1958); overruled to extent inconsistent, 71 I.D. 22 (1964).
- Moses, Beulah, 21 IBLA 157 (1975); vacated (On Recon.), 60 IBLA 252 (1981).
- Mountain Fuel Supply Co., A-31053 (Dec. 19, 1969); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Munsey, Glen, et al. v. Smitty Baker Coal Co., Inc., 1 IBMA 144, 162; 79 I.D. 501, 509 (1972); distinguished, Sewell Coal Co., 2 IBMA 80, 80 I.D. 251 (1973).
- Muslow, James, Sr., 51 IBLA 19 (1980); affirmed in part, rev'd in part, (On Recon.), 65 IBLA 352 (1982).
- Myll, Clifton O., 71 I.D. 458 (1964); supplemented, 71 I.D. 486 (1964); vacated, 72 I.D. 536 (1965).

Table of Overruled and Modified Cases

- National Livestock Co. et al., I.G.D. 55 (1938); overruled, U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972).
- Naughton, Harold J., 3 IBLA 237, 78 I.D. 300 (1971); distinguished, Kristeen J. Burke et al., 20 IBLA 162 (1975).
- New Mexico, State of, 24 IBLA 135 (1976); vacated, (On Recon.), 50 IBLA 367 (1980).
- Northway Natives Inc., 69 IBLA 219 (1982); overruled to extent inconsistent, U.S. Fish & Wildlife Service, 72 IBLA 218 (1983).
- Northwest Pipeline Co., 65 IBLA 245 (1982); set aside, (On Recon.), 77 IBLA 46 (1983).
- Northwestern Colorado Broadcasting Co., 18 IBLA 62 (1974); overruled, Peregrine Broadcasting Co., 62 IBLA 133 (1982).
- Oil & Gas Privilege & License Tax, Fort Peck Reservation, Under Laws of Montana, M-36318 (Oct. 13, 1955); superseded to the extent inconsistent, Solicitor's Opinion--Tax Status of the Production of Oil & Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Opinion of Assoc. Solicitor (Lands), M-34999 (Oct. 22, 1947); distinguished, Lands Eligible to be Placed Under Recordable Contracts, M-36613, 68 I.D. 433 (1961).
- Opinion of Assoc. Solicitor for Indian Affairs, M-36756 (Oct. 8, 1968)--Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, Calif.--Patent of Land Under the Act of Mar. 1, 1907; vacated as to those parts in conflict with the decision of the Ass't Secretary of the Interior dated Nov. 4, 1971.--Authority to Issue Trust Patents for the Benefit of Certain Groups of Mission Indians of Calif., Pursuant to the Act of Mar. 1, 1907, for Parcels of Land Within the "Mission Reserve," M-36756 (Supp.) (Nov. 18, 1971).
- Opinion of Chief Counsel, 43 I.D. 339 (1914)--Reclamation--Water Right--Proviso to Sec. 3, Act of Aug. 9, 1912; explained, Proposed Repayment Contracts--Kings & Kern River Projects, M-36634, 68 I.D. 372 (1961).
- Opinion of Deputy Ass't Secretary (Dec. 2, 1966), affirming Oct. 27, 1966; superseded to the extent inconsistent, Solicitor's Opinion--Tax Status of the Production of Oil & Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Opinion of Secretary, M-36733, 75 I.D. 147 (1968)--Union Oil Co. Bid on Tract No. 228, Brazos Area, Texas Offshore Sale; vacated, M-36733 (Supp.), 76 I.D. 69 (1969).
- Opinion of Solicitor, 55 I.D. 14 (1934)--Powers of Indian Tribes; overruled so far as inconsistent, Authority of the Bureau of Indian Affairs to Transfer to an Indian Tribe the Direction of Federal Employees Pursuant to the Provisions of R.S. § 2072, 25 U.S.C. § 48, M-36803, 77 I.D. 49 (1970).
- Opinion of Solicitor, M-27690 (June 15, 1934)--Migratory Bird Treaty Act; overruled to extent of conflict, M-36936, 88 I.D. 586 (1981).
- Opinion of Solicitor, M-28198 (Jan. 8, 1936)--finding, inter alia, that Indian title to certain lands within the Fort Yuma Reservation has been extinguished, is well founded & is affirmed, Solicitor's Opinion, M-36886, 84 I.D. (1977)--Title to Certain Lands Within the Boundaries of the Ft. Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1885; overruled, Solicitor's Opinion, M-36908 86 I.D. 3 (1979)--Title to Certain Lands Within the Boundaries of the Fort Yuma (Now Called Quechan) Indian Reservation.
- Opinion of Solicitor, 55 I.D. 466 (1936)--State of New Mexico; overruled to extent it applies to 1926 Executive Order to artificially developed water sources on public lands, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979)--Federal Water Rights of the National Park Service, Fish & Wildlife Service, Bureau of Reclamation & the Bureau of Land Management.
- Opinion of Solicitor, M-34326, 59 I.D. 147 (1945)--Indian Rights in Columbia River Reservoir; overruled in part, Opinion on the Boundaries of & Status of Title to Certain Lands Within the Colville & Spokane Indian Reservations, M-36887, 84 I.D. 72 (1977).
- Opinion of Solicitor, M-36047, 60 I.D. 436 (1950)--Authority of the Department to Engage in Soil Conservation Activities; will not be followed to the extent that it conflicts with these views, Soil & Moisture Conservation Program, M-36677, 72 I.D. 92 (1965).
- Opinion of Solicitor, M-36051 (Dec. 7, 1950)--Oil & Gas Leases on Land in the Strawberry Valley Reclamation Project; modified, Solicitor's Opinion--Strawberry Valley Project, Utah, M-36863, 79 I.D. 513 (1972).
- Opinion of Solicitor, M-36241 (Sept. 22, 1954)--Permissible Scope of an Indian Tribal Ordinance Authorizing Transaction in Intoxicating Beverages Within Area of Indian Country Subject to Jurisdiction of Such Tribe; overruled as far as inconsistent, Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907, 85 I.D. 433 (1978).
- Opinion of Solicitor, M-36410 (Feb. 11, 1957)--Imposition of North Dakota State Fish & Game Laws on Indian Claiming Treaty & Other Rights to Hunt & Fish; overruled to extent of conflict, M-36936, 88 I.D. 586 (1981).
- Opinion of Solicitor, M-36429, 64 I.D. 393 (1957)--Construction of Recording Requirement of Sec. 4, Act of Aug. 11, 1955 (69 Stat. 681; 30 U.S.C. § 623); no longer followed, B. E. Burnaugh, A-28340 (Supp.), 67 I.D. 366 (1960).
- Opinion of Solicitor, M-36434 (Sept. 12, 1958); overruled to extent inconsistent, Turner Smith, Jr., Signe D. Smith, 66 IBLA 1, 89 I.D. 386 (1982).

Table of Overruled and Modified Cases

- Opinion of Solicitor, M-36456, 64 I.D. 435 (1957)
--Status of Ozette Reservation, Washington;
will not be followed to the extent that it con-
flicts with these views, Status of the Ozette
Indian Reservation, Washington, M-36456 (Supp.),
76 I.D. 14 (1969).
- Opinion of Solicitor, M-36463, 64 I.D. 351 (1957)
--Can a Partnership Composed Partly of Minors
be a Recognized Applicant for Oil & Gas Leases;
overruled, Issuance of Mineral Leases to Partner-
ships, M-36706, 74 I.D. 165 (1967).
- Opinion of Solicitor, M-36512 (July 29, 1958)--
Applicability of 43 CFR 192.42(d)(2) to Beds
of Non-Navigable Waters Adjacent to Public
Lands; overruled to extent inconsistent,
Emily K. Connell, A-29176, 70 I.D. 159 (1963).
- Opinion of Solicitor, M-36531 (Oct. 27, 1958) &
M-36531 (Supp.) (July 20, 1959)--Automatic
Termination of Unitized Leases for Failure to
Pay Rentals; overruled, M-36629, 69 I.D. 110
(1962).
- Opinion of Deputy Solicitor, M-36562 (Aug. 21,
1959)--Authority of the Secretary of the
Interior to Withdraw for a Wildlife Refuge,
A Portion of the Tidal & Submerged Lands
Within Three Geographical Miles of the Coast
Line of Alaska; overruled, Solicitor's Opin-
ion, M-36911, 86 I.D. 151 (1979)--Effect of
Public Land Order 82 on the Ownership of
Coastal Submerged Lands in Northern Alaska.
- Opinion of Solicitor, M-36613, 68 I.D. 433 (1961)
--Lands Eligible to be Placed Under Recordable
Contracts; distinguished & limited, Westlands
Water District Contract, Central Valley Project,
Calif.--Excess Land Limitations, M-36666,
72 I.D. 245 (1965).
- Opinion of Solicitor, M-36767 (Nov. 1, 1967)--
Ownership of Minerals Beneath Certain Patented
Lands in San Carlos Mineral Strip; supplementing,
Authority of the Secretary of the Interior to
Restore Lands in San Carlos Mineral Strip to
Tribal Ownership, M-36599, 69 I.D. 195 (1962).
- Opinion of Solicitor, M-36779 (Nov. 17, 1969)--
Appeals of Freeport Sulphur Co. & Texas Gulf
Sulphur Co. & M-36841 (Nov. 9, 1971), Appeal
of Amoco Production Co.; distinguished with
respect to applicability of exemptions (4) & (9)
of FOIA to present value estimated; overruled
with respect to applicability of exemption (5)
of FOIA to presale estimates, M-36918, 86 I.D.
661 (1979).
- Opinion of the Solicitor, M-36886, 84 I.D. 1 (1977)
--Title to Certain Lands within the Boundaries
of the Ft. Yuma Indian Reservation as Established
by the Executive Order of Jan. 9, 1884; overruled,
Solicitor's Opinion--Title to Certain Lands Within
the Boundaries of the Fort Yuma (Now Called Quechan)
Indian Reservation, M-36908, 86 I.D. 3 (1979).
- Opinion of Solicitor, M-36905 (Supp.), 88 I.D. 903
(1981). Earlier opinions on cumulative impact
analysis have been withdrawn, M-36938, 88 I.D. 903
(1981).
- Opinion of Solicitor, M-36910, 86 I.D. 89 (1979);
modified, M-36910 (Supp.), 88 I.D. 909 (1981).
- Opinion of Solicitor, M-36915, 86 I.D. 400 (1979);
modified to extent inconsistent, M-36915
(Supp. I), 90 I.D. 255 (1983).
- Oregon Alder-Maple Co., 1 IBLA 241 (1971); distin-
guished, Nordic Veneers, Inc., 3 IBLA 86 (1971).
- Orem Development Co. v. Leo Calder, A-26604 (Dec. 18,
1953), decision set aside & case remanded, A-26604
(On Recon.), 90 I.D. 223 (1983).
- Page, Ralph, 8 IBLA 435 (1972); explained,
Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974).
- Paine, John A., 22 IBLA 56 (1975); vacated, 66 IBLA
77 (1982).
- Phebus, Clayton, 48 L.D. 128 (1921); overruled so
far as in conflict, 50 L.D. 281 (1924); over-
ruled to extent inconsistent, Emily E. Connell,
A-29176, 70 I.D. 159 (1963).
- Phillips, Cecil H., A-30851 (Nov. 16, 1967); over-
ruled, Duncan Miller, 6 IBLA 216, 79 I.D. 416
(1972).
- Phillips, Vance W., 14 IBLA 79 (1973); modified,
Vance W. Phillips, 19 IBLA 211 (1975).
- Provinse, David A., 49 IBLA 134 (1980); overruled to
extent inconsistent, 57 IBLA 319 (1981).
- Ranger Fuel Corp., 2 IBMA 163, 80 I.D. 708 (1973);
set aside, Memorandum Opinion & Order Upon
Reconsideration in Ranger Fuel Corp., 2 IBMA 186,
80 I.D. 604 (1973).
- Rayburn, Ethel Cowgill, A-28866 (Sept. 6, 1962);
modified, T. T. Cowgill et al., 19 IBLA 274
(1975).
- Reich, Harry, 27 IBLA 123 (1976); distinguished,
57 IBLA 357 (1981).
- Reliable Coal Corp., 1 IBMA 50, 78 I.D. 199 (1971);
distinguished, Zeigler Coal Corp., 1 IBMA 71,
78 I.D. 362 (1971).
- Relocation of Flathead Irrigation Project's Kerr
Substation & Switchyard, M-36735 (Jan. 31,
1968); rev'd & withdrawn, M-36735 (Supp.),
83 I.D. 346 (1976).
- Republic Oil & Mining Co., 35 IBLA 212 (1978);
distinguished, Curtis Wheeler, 62 IBLA 384
(1982).
- Resources Exploration & Mining, Inc., 42 IBLA 63
(1979); modified, (On Recon.), 43 IBLA 89 (1979).
- Rhonda Coal Co., 4 IBSMA 124, 89 I.D. 460 (1982);
modified to extent inconsistent, Kimberly Sue
Coal Co., Inc., 74 IBLA 170 (1983).
- Ricci, Charles P., 33 IBLA 288 (1978); set aside
& remanded, (On Recon.), 34 IBLA 186 (1978).
- Ross, John R., et al., A-27259 (Mar. 12, 1956);
set aside in part, Robert C. Ellis, A-29185
(Sept. 9, 1964).

Table of Overruled and Modified Cases

- Sanford, Nora L., 43 IBLA 74 (1979); vacated, (On Recon.), 63 IBLA 335 (1982).
- Schweite, Helena M., 14 IBLA 305 (1974); distinguished, Kristeen J. Burke et al., 20 IBLA 162 (1975).
- Seggerson, Edward, Jr., 67 IBLA 189 (1982); modified to reflect consideration of 43 CFR 3566.3, (On Recon.), 74 IBLA 267 (1983).
- Shillander, H. E., A-30279 (Jan. 26, 1965); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Silver Spot Metals, Inc., 51 IBLA 212 (1980); overruled to extent inconsistent, Zula C. Brinkeroff, 75 IBLA 179 (1983).
- Simpson, Robert E., A-4167 (June 22, 1970); overruled to extent inconsistent, U.S. v. Union Carbide Corp., 31 IBLA 72, 84 I.D. 309 (1977).
- Smith, James W. (IBLA 80-57 & IBLA 80-67), 46 IBLA 233 (1980); IBLA 80-67 dismissed; 55 IBLA 390 (1981).
- Smith, M. P., 51 I.D. 251 (1925); overruled, Solicitor's Opinion--Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, & Outer Continental Shelf Lands Act Royalty Clause, M-36888, 84 I.D. 54 (1977).
- Standard Oil Co. of California et al., 76 I.D. 271 (1969); no longer followed, 5 IBLA 26, 79 I.D. 23 (1972).
- Star Gold Mining Co., 47 I.D. 38 (1919); distinguished, U.S. v. Alaska Empire Gold Mining Co., 71 I.D. 273 (1964).
- State Production Taxes on Tribal Royalties from Leases Other than Oil & Gas, M-36345 (May 4, 1956); superseded to the extent inconsistent, Solicitor's Opinion--Tax Status of the Production of Oil & Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Stevens, David E., 23 IBLA 221 (1976); vacated, 64 IBLA 72 (1982).
- Stevens, Marion, 23 IBLA 280 (1976); vacated, 64 IBLA 69 (1982).
- St. Pierre, Roger & the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203, 89 I.D. 132 (1982); overruled by an order: Robert Burnette (Appellant) v. Deputy Ass't Secretary--Indian Affairs (Operations) (Appellee), 10 IBIA 464, 89 I.D. 609 (1982).
- Superior Oil Co., A-28897 (Sept. 12, 1962); distinguished in dictum, 6 IBLA 318, 79 I.D. 439 (1972).
- Tevuk, Dwight (Deceased), 22 IBLA 296 (1975); rev'd & remanded, (On Recon.), 29 IBLA 296 (1975).
- Thomas, John C. & Martha W., d.b.a. Tungsten Mining Co., 53 IBLA 182 (1981); vacated, (On Recon.), 59 IBLA 364 (1981).
- Titus, Walter, 22 IBLA 233 (1975); vacated & remanded, (On Recon.), 77 IBLA 321 (1983).
- Towl v. Kelly, 54 I.D. 455 (1934); overruled, Ralph F. Rosenbaum, 66 IBLA 374, 89 I.D. 415 (1982).
- Tugatuk, Anuska, 23 IBLA 182 (1976); vacated, (On Recon.), 59 IBLA 345 (1981).
- Union Oil Co., 56 IBLA 206 (1981); vacated, (On Recon.), 58 IBLA 166 (1981).
- Union Oil Co. of California (Supp.), 72 I.D. 313 (1965); overruled & rescinded in part, U.S. v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (1983).
- United Indians of All Tribes Foundation v. Acting Deputy Ass't Secretary--Indian Affairs, 11 IBIA 226 (1983); vacated in part, 11 IBIA 276, 90 I.D. 376 (1983).
- U.S. v. Barngrover (On Rehearing), 57 I.D. 533 (1942); overruled in part, U.S. v. Robinson, 21 IBLA 363, 82 I.D. 414 (1975).
- U.S. v. Edeline, 39 IBLA 236 (1979); overruled to extent inconsistent, U.S. v. J. Gary Feezor et al., 74 IBLA 56, 90 I.D. 262 (1983).
- U.S. v. Kosanke Sand Corp., 3 IBLA 189, 78 I.D. 285 (1971); set aside & case remanded, 12 IBLA 282, 80 I.D. 538 (1973).
- U.S. v. McClarty, 71 I.D. 331 (1964); vacated & case remanded, 76 I.D. 193 (1969).
- U.S. v. Melluzzo, A-31042, 76 I.D. 181 (1969); set aside, (On Recon.), 1 IBLA 37, 77 I.D. 172 (1970).
- U.S. v. Nelson, 8 IBLA 294 (1972); vacated, 28 IBLA 314 (1977).
- Virginia Fuels, Inc., 4 IBSMA 185, 89 I.D. 604 (1982); modified to extent inconsistent, Kimberly Sue Coal Co., Inc., 74 IBLA 170 (1983).
- Wasserman, Jacob N., A-30275 (Sept. 22, 1964); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Wassillie, Elia, 23 IBLA 276 (1976); vacated, (On Recon.), 59 IBLA 361 (1981).
- Wassillie, Madrona, Heirs of, 23 IBLA 131 (1975); vacated, (On Recon.), 64 IBLA 167 (1982).
- Waters, Valda, 44 IBLA 272 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).
- Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (1978); modified, James W. Smith (On Recon.), 55 IBLA 390 (1981).
- Western Slope Gas Co., 40 IBLA 280; reconsideration denied, 43 IBLA 259 (1979); overruled in pertinent part, Solicitor's Opinion, M-36917, 87 I.D. 27 (1980).

Table of Overruled and Modified Cases

Weyerhaeuser Co., 33 IBLA 254 (1978); rev'd & remanded, (On Recon.), 34 IBLA 244 (1978).

Williams, Wayne C., 23 IBLA 88 (1975); vacated, (On Recon.), 61 IBLA 181 (1982).

Williamson, Lee B., 54 IBLA 326 (1981); overruled to extent inconsistent, 57 IBLA 319 (1981).

Wilson Earl R., 21 IBLA 392 (1975); modified & distinguished, Cecil A. Walker, 26 IBLA 71 (1976).

Winchester Land & Cattle Co., 65 I.D. 148 (1958); & E. W. Davis, A-29889 (Mar. 25, 1964); no longer followed in part, Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973).

Winters, Raymond W., A-28125 (Jan. 15, 1960); overruled, Forest Oil Corp., 15 IBLA 33 (1974).

Wolf Joint Ventures, 75 I.D. 137 (1968); distinguished, U.S. v. Union Carbide Corp., 31 IBLA 72, 84 I.D. 309 (1977).

Wostenberg, William, A-26450 (Sept. 5, 1952); distinguished in dictum, 6 IBLA 318, 79 I.D. 439 (1972).

Young Bear, Victor, Estate of, 8 IBIA 130, 87 I.D. 311, (1980); rev'd by Supp., 8 IBIA 254, 88 I.D. 410 (1981).

Zeigler Coal Co., 4 IBMA 139, 82 I.D. 221, (1975), OSHD par. 19,638 (1975); overruled in part, Alabama By-Products Corp. (On Recon.), 7 IBMA 85, 83 I.D. 574 (1976).

* * * * *

TABLE OF SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS
BOTH PUBLISHED AND UNPUBLISHED

Page(s)	Page(s)
Adams, Alonzo, <u>et al.</u> v. Witmer <u>et al.</u> -----CV	Arnold, Hillin L., <u>et al.</u> v. Morton <u>et al.</u> -----CII
Adams, Bill, <u>et al.</u> v. Andrus-----LXVII	Ashley, Eleanor P., as Personal Representative of Estate of Charles D. Ashley v. Andrus-----LXVIII
Adams, Scott Q. v. Watt & Sundquist-----LXVII	Atlantic Richfield Co. v. Hickel-----CI
Adamick, Joseph, <u>et al.</u> v. Watt <u>et al.</u> -----CXV	Atlantic Richfield Co. v. Watt-----CIII
Adomkus, Walter v. Watt-----LXVII	Atlantic Richfield Co. & Pasco, Inc. v. Morton <u>et al.</u> -----LXIX, LXXXIX
Adler Construction Co. v. U.S.-----LXVII	Attocknie, Willis v. Udall-----LXIX
Ahrens, Robert J., <u>et al.</u> v. Andrus-----LXXIX	Atwood <u>et al.</u> v. Udall-----CIV
Akers, Dolly Cusker v. DOI-----LXVII	Austin, Buck, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Thompson, Morris, Comm'r of Indian Affairs-----XCIII
Alaska, State of v. Alaska Native Claims Appeal Board <u>et al.</u> -----LXXVIII	Aztec Exploration & Development Co. v. DOI <u>et al.</u> -----LXXV
Alaska, State of v. Andrus <u>et al.</u> -----LXVII	Babcock, James, <u>et al.</u> v. Udall-----LXIX
Alaska, State of v. Lestenkof, Jacob <u>et al.</u> -----LXVII	Babcock, J. C. & L. G. Shipp v. The Secretary of the Interior-----LXIX
Alaska, State of v. 13.9 Acres of Land <u>et al.</u> -----LXVII	Babington, Charles J. v. Udall-----CI
Albrechtsen, Ray H. & Mountain States Corp. v. Morton-----LXXXIII	Baciarelli, Elverna Yevonne Clairmont v. Morton-----LXXV
Aleutian/Pribilof Islands Ass'n v. Powers, Gene R., <u>et al.</u> -----LXVII	Badger Coal Co. v. Andrus-----LXIX
Alexander, Ken & Kenneth D. v. Secretary-----CV	Badger Coal Co. v. Andrus <u>et al.</u> -----LXIX
Alexander, Robert D. v. Watt <u>et al.</u> -----LXVIII	Bagley, David C., <u>et al.</u> v. Udall <u>et al.</u> -----LXIX
Alexander, William T. v. Andrus <u>et al.</u> -----LXVIII	Baker, Melton E. v. U.S., Kleppe, <u>et al.</u> -----CV
Alexander, William T. v. Frizzell, Kent, Acting Secretary, <u>et al.</u> -----LXVIII	Baker, Phil v. DOI-----LXIX
Alker, Henry A. v. Watt & Dolezal-----LXXVII	Baldwin, H. E. & John R. Keeling v. Morton <u>et al.</u> -----LXIX
Allen, E. H., <u>et al.</u> v. Udall-----LXVIII	Ball Brothers Sheep Co. v. Morton-----LXIX
Allen, William v. Morton-----LXVIII	Ballard E. Spencer Trust, Inc. v. Morton <u>et al.</u> -----LXIX
Allied Contractors, Inc. v. U.S.-----LXVIII	Barash, Max v. McKay-----LXX
Altex Oil Corp. v. Watt <u>et al.</u> -----LXVIII	Barnett, Pearl C. v. Watt <u>et al.</u> -----LXX
Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Morton-----C	Barnard-Curtiss Co. v. U.S.-----LXX
American Coal Co. v. DOI-----LXVIII	Barrows, Esther, as an Individual & as Executrix of the Last Will of E. A. Barrows, Deceased v. Hickel-----CV
American Telephone & Telegraph Co. v. DOI, Morton, <u>et al.</u> -----LXVIII	Bartell, A. O. v. Andrus-----CVI
Anadarko Production Co. v. Watt-----LXVIII	Barton, Harold E. L. v. Udall <u>et al.</u> -----CXIV
Anderson, A. F., <u>et al.</u> v. Morton & The Board of Land Appeals-----CV, CXIV	Barton, R. M. v. Morton <u>et al.</u> -----LXX
Anderson, L. Robert v. Udall-----XCVI	
Arjay Oil Co. v. Andrus, Cecil, Curt Berklund, <u>et al.</u> -----LXVIII	
Arjay Oil Co. v. Andrus, Cecil D., George L. Turcott, <u>et al.</u> -----LXVIII	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Bass Enterprises Production Co. <u>v.</u> Andrus-----LXX	BPS Associates <u>et al.</u> <u>v.</u> U.S., Andrus, <u>et al.</u> -----LXXII
Battle Mountain Co. <u>v.</u> Udall-----LXX, LXXXVII	Bradford Mining Corp., Successor of J. R. Osborne <u>v.</u> Andrus-----CXI
Bay Construction Co. <u>et al.</u> <u>v.</u> U.S.-----LXX	Brandt, Mary L., & Natalie Z. Shell <u>v.</u> Udall-----LXXXII
Beaird, Charles Thomas <u>v.</u> Andrus & U.S.-----CVI	Brazie, George B., Individually & as the Executor of the Last Will & Testament of Julius Benter, Deceased <u>v.</u> Morton-----LXX
Beatty, Bernice, <u>et al.</u> <u>v.</u> BLM <u>et al.</u> -----XCV	Brice, William B. <u>v.</u> Watt <u>et al.</u> -----LXXI
Belknap, Robert E., III, <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----LXX	Brick, Irving B. <u>v.</u> Andrus-----LXXI
Bender, Jack J. <u>v.</u> Watt <u>et al.</u> -----LXX	Brookhaven Oil Co. <u>v.</u> Seaton-----LXXI
Bennett, William, Paul F. Goad & United Mine Workers <u>v.</u> Kleppe-----LXXI	Brown, H. D. <u>v.</u> U.S. & Hickel-----LXXV
Benson-Montin-Greer Drilling Corp. <u>v.</u> Andrus <u>et al.</u> -----LXX	Brown, Jessie A. & W. L. Tallon, Jr. <u>v.</u> Andrus <u>et al.</u> -----LXXI
Bergesen, Sam <u>v.</u> U.S.-----LXX	Brown, Melvin A. <u>v.</u> Udall-----LXXI
Big Delta Minerals, Inc. <u>v.</u> Andrus-----LXX	Brown, Penelope Chase, <u>et al.</u> <u>v.</u> Udall-----CV
Bigheart, Velma Rose, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian <u>v.</u> Pappan, John, Supt. Osage Indian Agency, <u>et al.</u> -----LXXI	Brown, Robert G., Jr., <u>et al.</u> <u>v.</u> U.S.-----XCVIII
Billmeyer, John, etc. <u>v.</u> U.S.-----LXXXIV	Brown, Tom <u>v.</u> DOI-----LXXI
Bishop, Clyde W. <u>v.</u> Udall-----LXXXIII	Brubaker, Earl J., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----CVIII
Bishop Coal Co. <u>v.</u> Kleppe-----C	Brubaker, R. W., <u>et al.</u> <u>v.</u> Morton-----CVI
Black Fox Mining & Development Corp. <u>v.</u> Andrus <u>et al.</u> -----LXXI	Brunskill, Ernest L. & Evelyn B. <u>v.</u> Secretary of the Interior-----CVI
Blackhawk Mining Co. <u>v.</u> Andrus-----LXXI	Bryant, Joe E. <u>v.</u> Secretary of the Interior-----CVI
Blackwood Fuel Co. <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXI	Buch, R. C. <u>v.</u> Udall-----LXXII
Block, J. L. <u>v.</u> Morton-----CVI	Bunch, Evelyn M. <u>v.</u> Kleppe-----LXXII
Blue Bell Gold Mining Co. <u>v.</u> Morton <u>et al.</u> -----CVI	Bunkowski, Henrietta & Andrew Julius <u>v.</u> Applegate, L. Paul, District Manager, BLM, Thomas S. Kleppe, Secretary of the Interior, <u>et al.</u> -----CVI
Blythe, Catherine R. <u>v.</u> Kleppe-----CVI	Bunn, Thomas M. <u>v.</u> Udall-----XCVIII
Bob Marshall Alliance <u>et al.</u> <u>v.</u> Watt-----LXXVI	Burglin, C., A. E. Greig, Owen Jennings, <u>et al.</u> <u>v.</u> Kleppe <u>et al.</u> -----LXXII
Bobb, Wilson, Sr. <u>v.</u> U.S. & Andrus-----LXXI	Burglin, C., Dennis Krize, Mark & Kenneth Ringstad, Lloyd Burgess, <u>et al.</u> <u>v.</u> Hathaway <u>et al.</u> -----CXVIII
Boesche, Fenelon <u>v.</u> Seaton-----LXXI	Burglin, C., Earnest G. & Dora A. Carter & Michael F. Scanlan <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Booth, Lloyd W. <u>v.</u> Hickel-----CVI	Burglin, C. & Helen Bailey <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Boudreaux, Leroy J. <u>v.</u> Watt <u>et al.</u> -----LXXI	Burglin, C. & R. C. Bailey <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Bowen <u>v.</u> Chemi-Cote Perlite-----LXXIII	
Bowman, James Houston <u>v.</u> Udall-----XCIX	
Boyd, Jack Zemmy, Jr. <u>v.</u> Andrus-----CVI	
Boyle, Alice A. & Carrie H. <u>v.</u> Morton-----CVI	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Burglin, C. & William D. Sexton v. Morton <u>et al.</u> -----C	Christy Corp. v. U.S.-----LXXIV
Burkhardt, Walter H., <u>et al.</u> v. Morton <u>et al.</u> -----CV, CXIV	Citizens Committee to Save Our Public Lands <u>et al.</u> v. Andrus <u>et al.</u> -----LXXIV
Burkybile, Doris Whiz v. Smith, Alvis, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, <u>et al.</u> -----CXVI	Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Kleppe <u>et al.</u> -----LXXIV
Burn Construction Co., Inc. v. U.S.-----LXXII	Clark, County of v. Kleppe <u>et al.</u> -----LXXIV
Burr, David L., <u>et al.</u> v. Watt <u>et al.</u> -----LXXII	Clark, Donald L. v. Watt-----LXXIV
Bushman Construction Co. v. U.S.-----LXXII	Clarkson, Stephen H. v. U.S.-----LXXIV
Burton/Hawks, Inc. & Energy Trading, Inc. v. Watt-----LXXII	Clear Gravel Enterprises v. Keil, Nolan, State Dir., BLM, Nevada, <u>et al.</u> -----CVII
Byrd, Norman R. v. Andrus & U.S.-----LXXII	Clements, John Raymond v. Seaton-----CVII
Calder, Zeph S. v. Udall-----LXXII	COAC, Inc. v. U.S.-----LXXIV
Calhoun & Howell of Oregon, Ltd. v. Hickel-----CVI	Cobb, P. & Osro v. U.S.-----LXXIV
California Ass'n of 4WD Clubs, Inc. <u>et al.</u> v. Andrus <u>et al.</u> -----LXXII	Cody, Elsie v. Hickel-----CVII
California Co., The v. Udall-----LXXII	Cohen, Hannah & Abram v. U.S.-----LXXIV
California Oil Co. v. Sec.-----CII	Colorado-Ute Electric Ass'n v. Andrus <u>et al.</u> -----LXXIV
California Portland Cement Co. v. Andrus <u>et al.</u> -----LXXIII	Colson, Barney R. v. Morton-----LXXIV
Cameron Parish Police Jury v. Udall <u>et al.</u> -----LXXIII	Colson, Barney R., <u>et al.</u> v. Udall-----LXXIV
Canon, Jack D. & Billie B., <u>et al.</u> v. Andrus-----LXXIII	Commercial Metals Co. v. U.S.-----LXXIV
Canterbury Coal Co. v. Kleppe-----LXXIII	Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe, Thomas, & Phillip Brendale-----CXV
Capital Fuels, Inc. v. Andrus-----LXXIII	Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe, Thomas, & Erwin Ray-----LXXIX
Carl, Jack E. v. Seaton-----LXXIII	Conoco, Atlantic Richfield Co. & Tenneco Oil Co. v. Andrus-----CIII
Carr, Marie Tieyah v. Andrus-----CIII	Consolidated Gas Supply Corp. v. Udall <u>et al.</u> -----LXXI, LXXXIII, LXXXVII
Carson Construction Co. v. U.S.-----LXXIII	Consolidation Coal Co. v. Andrus-----LXXV
Century Industries-Flagstaff <u>et al.</u> v. U.S., Morton, <u>et al.</u> -----CVIII	Constitution Petroleum Co., Arrow Petroleum Co. & East Utah Mining Co. v. Kleppe <u>et al.</u> -----LXXV
C. F. Lytle Co. v. U.S.-----LXXIII	Continental Oil Co. v. Udall <u>et al.</u> -----LXXV
Chambers, Evelyn v. Andrus, Cecil D. & Paul Howard, State Director, BLM-----LXXIII	Converse, Ford M. v. Udall-----CVII
Chaparral Resources, Inc. v. Andrus <u>et al.</u> -----LXXIII	Conway, Joe v. Watt <u>et al.</u> -----LXXV
Chapman, John C., <u>et al.</u> v. U.S.-----CVI	Cooley, David E., Jr. v. Watt <u>et al.</u> -----LXXV
Charlestone Stone Products Co. v. Morton-----CVI	Cooper, Gordon L. v. Andrus <u>et al.</u> -----LXXV
Chournos, Nick v. U.S.-----CVII	Copper Valley Machine Works, Inc. v. Andrus-----LXXV
Chournos, Nick, <u>et al.</u> v. U.S. <u>et al.</u> -----CVII	Cornell, Jay F. v. Morton-----LXXV
Christiansen Oil & Gas, Inc. v. Andrus, Cecil D. & Daniel P. Baker-----LXXIV	Cornia, William D., <u>et al.</u> v. Udall-----LXXV

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Corns, Graham J. <u>v.</u> Secretary of the Interior-----	CVII
Cortella Coal Corp. & Alaska Mineral Exploration Co. <u>v.</u> McVee, Curtis V., State Dir., BLM, Alaska <u>et al.</u> -----	LXXV
Cosmo Construction Co. <u>et al.</u> <u>v.</u> U.S.-----	LXXV
Cotton Petroleum Corp. <u>v.</u> Andrus <u>et al.</u> -----	LXXV
Couch, D. Q. (Bill) <u>v.</u> Udall-----	LXXXV
Council of the Southern Mountains, Inc. <u>v.</u> Watt-----	LXXVI
Coy, Mildred D., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXVI
Coyer, Donald W. & Fred L. Engle, d/b/a Resource Service Co. <u>v.</u> Andrus, Cecil D., Alfred L. Easterday & J. Ro-----	LXXVII
Coyer, Donald W. & Fred L. Engle, d/b/a Resource Service Co. <u>v.</u> Andrus, Cecil D., Wyoming State Office, BLM-----	LXXVII
Cramer, Philip <u>v.</u> Watt-----	LXXVI
Crawford, Jesse W. <u>v.</u> Udall-----	CVII
Crawford, Martha Alfreda Racine <u>et al.</u> <u>v.</u> Andrus-----	XCVII
Crenshaw, Lillian, <u>et al.</u> <u>v.</u> Sec.-----	LXXXI
Crouse, Elizabeth Barndt, <u>et al.</u> <u>v.</u> K. Ranch, Inc., Udall, <u>et al.</u> -----	LXXVI
Crow, Elsie May Pikok <u>v.</u> U.S. & Morton-----	LXXVI
Crow, Jerry L. <u>v.</u> Andrus & U.S.-----	CVII
Cuccia, Louise & Shell Oil Co. <u>v.</u> Udall-----	XC
Cuccia, Victoria L. <u>v.</u> Udall-----	CIV
Cultee, Susan Lee, <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXVI
D'Amico, Vincent M., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXVI
Daniel, Larry, <u>et al.</u> <u>v.</u> Andrus-----	LXXVI
Daniels, Elizabeth, <u>et al.</u> <u>v.</u> Johnson, Supt., Osage Indian Agency & Udall-----	LXXVI
Danks, Edward S., <u>et al.</u> <u>v.</u> Fields, Harrison, <u>et al.</u> -----	LXXIX
Darling, Bernard E. <u>v.</u> Udall-----	LXXXVII
David Excavating Co. <u>v.</u> Secretary of the Interior-----	LXXVI
David Excavating Co. <u>v.</u> Watt-----	LXXVI
Dawson, Ruby, <u>et al.</u> <u>v.</u> Kleppe-----	LXXI
Dawson, Susan <u>v.</u> Andrus-----	LXXVI
Day, Oma Belle <u>v.</u> Hickel <u>et al.</u> -----	LXXVI
Dean Trucking Co., Inc. <u>v.</u> Andrus-----	LXXVI
DeBord, Mary, <u>et al.</u> <u>v.</u> Watt & Dinco Coal Sales, Inc.-----	LXXVII
Denham, Bradley F. <u>v.</u> Andrus-----	CVII
Denison, Marie W. <u>v.</u> Udall-----	CVII
Desens, Wilbur G., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXVII
Devenny, J. S. <u>v.</u> Udall-----	CVII
Diamond Ring Ranch, Inc. <u>v.</u> Morton <u>et al.</u> -----	LXXII
Dietemann, Aloys A. & Doris E. <u>v.</u> Kleppe <u>et al.</u> -----	CVII
DiMarco, Richard J. <u>v.</u> Watt <u>et al.</u> -----	LXXVII
Dlouhy, Francis N. <u>v.</u> Seaton-----	CVII
Doria Mining & Engineering Corp. <u>v.</u> Morton <u>et al.</u> -----	LXXII
Downing, Arthur, Alan Winter, Alan Troxler & Headwaters <u>v.</u> Frizzell, Kent, Acting Secretary, <u>et al.</u> -----	LXXXII
Downtown Properties, Inc. <u>v.</u> Andrus <u>et al.</u> -----	LXXVII
Dredge Co. <u>v.</u> Husite Co.-----	LXXVII
Dredge Corp., The <u>v.</u> Morton <u>et al.</u> -----	CVIII
Dredge Corp., The <u>v.</u> Palmer-----	LXXIV
Dredge Corp., The <u>v.</u> Penny-----	LXXVII, CVIII
Dredge Corp., The <u>v.</u> Watt <u>et al.</u> -----	CVIII
Drummond Coal Co. <u>v.</u> Andrus <u>et al.</u> -----	LXXVII
Duesing, Bert F. <u>v.</u> Udall-----	CIV
Dunbar Stone Co. <u>v.</u> DOI, Watt, <u>et al.</u> -----	CVIII
Duval, Maurice, <u>et al.</u> <u>v.</u> Morton-----	CVIII
Duvels, Inc., West Park International, Inc., <u>et al.</u> <u>v.</u> Frizzell, Kent, Acting Secretary-----	CXVII
Dye, Lawrence E. & Claire E. <u>v.</u> Watt <u>et al.</u> -----	LXXVII
Eastover Mining Co. <u>v.</u> Andrus <u>et al.</u> -----	LXXVII
Edwards, Adrian, Trustee for Ross Stegman, & Real Party in Interest <u>v.</u> Morton-----	CII
Edwards, Lawrence <u>v.</u> Udall-----	LXXVII
Edwards, Wesley Laverne <u>v.</u> U.S. <u>et al.</u> -----	LXXVIII
Ehbrecht, Martha E. <u>v.</u> DOI <u>et al.</u> -----	LXXVIII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Ekker, Riter & Kerry <u>v.</u> Andrus, Cecil & BLM-----LXXVIII	Freeman, Autrice Copeland <u>v.</u> Udall-----LXIX
Eldridge, Hal W., <u>et al.</u> <u>v.</u> Sec.-----CXII	Freese, Andrew L., II <u>v.</u> Andrus-----CVIII
Elkay Mining Co. <u>v.</u> Andrus <u>et al.</u> -----LXXVIII	Fuel Resources Development Co. <u>v.</u> Andrus <u>et al.</u> -----LXXIX
Elkhorn Mining Co. <u>v.</u> Morton-----CVIII	Fullerton, Harold W. <u>v.</u> Andrus-----LXXIX
Eluska, Heldina, Individually & on behalf of all others similarly situated <u>v.</u> Kleppe, Thomas, Individually & in his official capacity as Secretary of the Interior-----LXXVIII	Funderburg, Coral V. <u>v.</u> Udall <u>et al.</u> -----LXXIX
Enevoldsen, H. J. <u>v.</u> Andrus <u>et al.</u> -----LXXVIII	Gabbs Exploration Co. <u>v.</u> Udall-----LXXIX, CV
Engle, Fred L., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----XCVIII	Gaffney, Bernard J. & Myrle A. <u>v.</u> Udall-----LXXIX
Equity Oil Co. <u>v.</u> Udall-----CV	Gahr, John <u>v.</u> Watt <u>et al.</u> -----LXXIX
Ernst, Henry J. <u>v.</u> Sec.-----LXXVIII	Gallagher, D. R. <u>v.</u> U.S., Watt, <u>et al.</u> -----LXXIX
Eskra, Constance Jean Hollen <u>v.</u> Morton <u>et al.</u> -----CXV	Gallagher, John A., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXXVIII
Evans, David H. <u>v.</u> Morton-----LXXVIII	Gardener, Jack L. <u>v.</u> Secretary-----CVIII
Exxon Co., U.S.A. <u>v.</u> Andrus-----CIII	Garcia, Barbara <u>v.</u> Andrus <u>et al.</u> -----XCVI
Farington, Elsie V. <u>v.</u> Morton-----LXXVIII	Garigan, Philip T. <u>v.</u> Udall-----LXXXIX
Farrelly, John J. & the Fifty-One Oil Co. <u>v.</u> McKay-----LXXVIII	Garner, Fred & Eileen <u>v.</u> U.S. <u>et al.</u> -----CVIII
Faulkner, Ralph G., John L., Laura Jo, R. Fred & Susan L. <u>v.</u> Kleppe <u>et al.</u> -----LXXVIII	Garrigus, Forest O., Jr., <u>et al.</u> <u>v.</u> Andrus-----CXI
Federal Energy Corp. <u>v.</u> DOI-----LXXVIII	Garthofner, Stanley <u>v.</u> Udall-----LXXIX
Ferguson, Chester H., Stella Ferguson Thayer & Howell L. Ferguson <u>v.</u> Morton <u>et al.</u> -----LXXVIII	Garula, Fred <u>v.</u> Udall-----CVIII
Ferry, Robert V. & Irving Baker <u>v.</u> Udall-----CI	Gary, Samuel <u>v.</u> Udall-----XCIX
Finnesand, Hannah, Flora Rondeau, <u>et al.</u> <u>v.</u> Morton <u>et al.</u> -----LXXVIII	Geikaunmah, Juanita Mammedaty & Imogene Geikaunmah Carter <u>v.</u> Morton-----LXXX
Fitzgerald, Kathryn R. & John Holden <u>v.</u> Hickel-----CVIII	Gelb, Sidney <u>v.</u> Kleppe-----LXXX
Foley, Rose May, <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----CII	General Electric Co. & Nellie McLaughlin <u>v.</u> Watt-----LXXXVIII
Foote Mineral Co. <u>v.</u> Andrus <u>et al.</u> -----LXXIX	General Excavating Co. <u>v.</u> U.S.-----LXXX
Foote Mineral Co. <u>v.</u> U.S.-----LXXIX	Geosearch, Inc. <u>v.</u> Andrus <u>et al.</u> -----LXXX
Forsberg, Carl E. <u>v.</u> Udall-----LXXIX, LXXXVII	Geosearch, Inc. <u>v.</u> Andrus, Lieurance, <u>et al.</u> -----LXXX
Foster, Everett, <u>et al.</u> <u>v.</u> Seaton-----CVIII	Geosearch, Inc. <u>v.</u> Watt <u>et al.</u> -----LXXVII, LXXXIV
Foster, Gladys H., Executrix of the Estate of T. Jack Foster <u>v.</u> Udall, Stewart L., Boyd L. Rasmussen-----LXXIX	Geosearch, Inc. & Carter, Elizabeth N. <u>v.</u> Watt <u>et al.</u> -----CXVIII
Foster, Katherine S. & Brook H. Duncan II <u>v.</u> Udall-----LXX	Geosearch, Inc. & Garner, Carrie <u>v.</u> Getty Oil Co. <u>et al.</u> -----LXXX
Foster, Robert K., <u>et al.</u> <u>v.</u> Manager, Riverside Land Office, <u>et al.</u> -----LXXIX	Geosearch, Inc. & Glasnapp, Larry R. <u>v.</u> Watt <u>et al.</u> -----LXX
	Geosearch, Inc. & Kaliciak, Edward F. <u>v.</u> Watt <u>et al.</u> -----LXXII
	Geosearch, Inc. & McGregor <u>v.</u> Watt <u>et al.</u> -----LXXXIII
	Geosearch, Inc. & Maslan, Herbert <u>v.</u> Watt <u>et al.</u> -----CXVII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Geosearch, Inc., Scholl & Doerr v. Watt et al.-----CII	Hall, William & Diane v. Sec.-----LXXXII
Gerttula, Nelson A. v. Udall-----LXXX	Hallenbeck, Charles V. Jr. & Clyde A. v. Bureau of Reclamation-----CVIII
Goad, Charles M. v. U.S. & Morton-----XCIX	Ham, J. E., et al. v. Andrus et al.-----LXXXVIII
Golden Eagle Mining Corp. v. Udall-----CVIII	Hamel, Lester J. v. Nelson et al.-----LXXXII
Gonsales, Charles B. v. Seaton-----LXXX	Hannifin, D. L. v. Hickel et al.-----CII
Gonsales, Charles B. v. Udall-----LXXX	Hansen, Raymond J. v. Seaton-----LXXIX
Gonzales, John v. Udall-----LXXX	Hansen, Raymond J., et al. v. Udall-----LXXXII
Goodrich, Charles v. Watt-----LXXX	Harrell, Beverly v. Hillsamer, A. John, et al.-----LXXXII
Goodwin, Jack v. Watt et al.-----LXXXI	Harris, Royal, et al. v. U.S., Cecil Andrus, et al.-----LXXXII
Goodwin, James C. v. Andrus, Dale R., State Dir., BLM, et al.-----LXXXI	Hartquist, Virgil T. v. Watt-----LXXXII
Granat, Ray, v. Kleppe, Thomas S., & DOI-----LXXXI	Harvey, Paul, Grace Ernest & Lalo Enriquez v. Udall-----LXXXII
Grewell, LaVonne V. v. Kleppe-----LXXXI	Haskins, Richard P., for Himself & as Administrator of the Estate of Bartholomew H. Haskins, Deceased v. Udall-----CIX
Grigg, Golden T., et al. v. U.S. & Morton-----CVIII	Haskins, Richard P. v. Watt-----CIX
Griggs, William H. v. Solan-----LXXXIII	Hat Ranch, Inc. v. Kleppe et al.-----LXXXII
Grindstone Butte Project et al. v. Kleppe et al.-----LXXXI	Hatter, Richard L., et al. d/b/a Chad Enterprise v. U.S.-----CXVII
Grooms, Eileen v. Watt & Hercules (A Partnership)-----LXXXII	Havlah Group, a Partnership & Gerald P. Kooyers v. Watt-----LXXXII
Growing Thunder, Nancy & Vernon, Minors, by & through their next friend & Guardian Ad Litem, Dale Running Bear v. Morton et al.-----LXXXI	Hayes, Joe v. Seaton-----CIII
Grynberg, Celeste C. & Dean G. Smernoff as Co-Trustees for the Stephen Mark Grynberg Trust v. Andrus et al.-----LXXXI	Hayes, Karen, Administratrix of the Estate of Keith C. Hayes, Deceased; Dorothy Smith v. Andrus-----CI
Gucker, George L. v. Udall-----XCIV	Heden, Gerald D. & Sharon A., John D. & Diane E. Prichard v. Secretary-----CIX
Gulf Oil Corp. & Mobil Oil Corp. v. Hathaway et al.-----LXXXI	Heffelman, Charles W. v. Udall-----CXVII
Gullo, Thomas V. & Joseph L. Randazzo v. DOI-----LXXXI	Held, Joel v. Andrus-----LXXIX
Gunsight Mining Corp. v. Morton-----CVIII	Henault Mining Co. v. Tysk et al.-----CIX
Guntert, Ronald M. & Marion G. v. Watt et al.-----LXXXI	Henri, Joseph R. & Aletha v. Andrus et al.-----CIX
Gustav Hirsch Organization, Inc. v. U.S.-----LXXXI	Henrikson, Charles H., et al. v. Udall et al.-----CIX
Guthrie Electrical Construction Co. v. U.S.-----LXXXI	Hernandez, Cesar v. Watt et al.-----CXIV
Haas, Ottlin D. v. DOI et al.-----LXXXI	Hickey, Thomas D. v. U.S., Interior Board of Land Appeals, et al.-----LXXXII
Haas, Walter S., Jr. v. Watt et al.-----LXXXI	Hicks, Taylor T., et al. v. U.S., Udall, Secretary of the Interior-----CIX
Hall, Charles, Jr. & Ruby Martin Archdale v. Andrus-----LXXXI	Higbee, Ernest, et al. v. Morton et al.-----CIX
(Hall), Georgette B. Lee v. Udall-----XCVII	Higgins, Jesse, et al. v. Andrus-----LXXXII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Hiko Bell Mining & Oil Co., a Utah Corp. <u>v. Kleppe</u> -----LXXXII	Island Creek Coal Co., Rebel Coal Co. <u>v. Andrus et al.</u> -----LXXXIV
Hiko Bell Mining & Oil Corp. <u>v.</u> <u>Andrus et al.</u> -----XCVI	Iverson, C. J. <u>v. Frizzell, Kent,</u> Acting Secretary & Dorothy D. Rupe-----LXXXIV
Hill, Houston Bus <u>v. Morton</u> -----XCVIII	James, Don & Winona <u>v. Gomez, Mabel</u> George, <u>et al.</u> -----XCVI
Hill, Houston Bus & Thurman S. Hurst <u>v. Morton</u> -----XCVIII	J. A. Terteling & Sons, Inc. <u>v. U.S.</u> -----LXXXIV
Hinton, S. Jack, <u>et al. v. Udall</u> -----XCIX	J. D. Armstrong, Inc. <u>v. U.S.</u> -----LXXXIV
Hirsch, Neil <u>v. Watt et al.</u> -----LXXXIII	Jensen-Rasmussen & Co. <u>v. U.S.</u> -----LXXXIV
Hoke Co. (The) <u>v. U.S. & Watt</u> -----LXXXIII	Joeckel, Raymond N. <u>v. Watt</u> -----LXXXIV
Holland Livestock Ranch <u>et al. v.</u> U.S., <u>Andrus, et al.</u> -----LXXII	John Walters Coal Co. <u>v. Watt et al.</u> -----LXXXV
Holland Livestock Ranch <u>et al. v. U.S.,</u> Watt, <u>et al.</u> -----LXXXIII	Johnson, Calvin C. <u>v. Andrus et al.</u> -----LXXXV
Holt, Kenneth, etc. <u>v. U.S.</u> -----LXXXIII	Johnson, Dale <u>v. Udall</u> -----LXXXV
Homer, City of <u>v. McVee et al.</u> -----LXXIV	Johnson, Leroy S., <u>et al. v. U.S. &</u> Andrus-----CIX
Hoover & Bracken Energies, Inc. <u>v. DOI,</u> Watt, <u>et al.</u> -----LXXXIII	Johnson, Leroy V. & Roy H., Marlene Johnson Exendine & Ruth Johnson Jones <u>v. Kleppe</u> -----LXXV
Hope Natural Gas Co. <u>v. Udall</u> -----LXXXIII, LXXXVII	Johnson, Menzel G. <u>v. Morton et al.</u> -----LXXXV
House, Charles & Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, Deceased <u>v. Andrus et al.</u> -----LXXXIII	Johnson, R. B. <u>v. Udall</u> -----CIX
Howey, Elbert F. <u>v. Morton</u> -----LXXXIII	Johnson, Robert N., <u>et al. & Thelma A.</u> Johnson as Individual & Executrix of Nolan F. Flutz Estate <u>v. Udall</u> -----CIX
Hudson, David Russell <u>v. U.S.,</u> Thomas S. Kleppe, <u>et al.</u> -----LXXXIII	J. T. & W. Coal Co. <u>v. Watt</u> -----LXXXV
Huff, Thomas J. <u>v. Asenap et al.</u> -----CXVII	June Oil & Gas, Inc. & Cook Oil & Gas, Inc. <u>v. Andrus et al.</u> -----LXXXV
Huff, Thomas J. <u>v. Udall</u> -----CXVII	Kadayso, Ruth Maynahonah <u>v. Udall</u> -----LXXXIX
Hugg, Harlan H., <u>et al. v. Udall</u> -----CV	Kadow, Kenneth J., <u>et al. v. Udall</u> -----LXXXV
Hughes, Charlotte & Charlene <u>v. Watt</u> -----LXXX	Kaiser Steel Corp. <u>v. Office of</u> Surface Mining & Enforcement-----LXXXV
Humboldt Placer Mining Co. & Del De Rosier <u>v. Sec. of the Interior</u> -----CIX	Kalerak, Andrew J., Jr., <u>et al. v.</u> Udall-----LXVII
Hunter, Dan H. & Mountain States Resources Corp. <u>v. Morton</u> -----LXXXIII	Kanawah Coal Co. <u>v. Andrus</u> -----LXXXV
H & W Oil Co. <u>v. Kleppe</u> -----LXXXIV	Karlson, Vivian S. <u>v. Watt</u> -----LXXXV
Hyrup, John V. <u>v. Morton</u> -----LXXXIV	Keans, R. A. <u>v. Udall et al.</u> -----LXXXV
Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. <u>v. Morton</u> -----CIX	Kennerly, Leo, Sr. <u>v. U.S., Andrus, et al.</u> -----LXXXV
Independent Quick Silver Co., an Oregon Corp. <u>v. Udall</u> -----CIX	Kennett, Paul D. <u>v. DOI et al.</u> -----LXVIII
Inlet Oil Corp. & Raymond J. Ellis <u>v. Hickel</u> -----XCVIII	Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. <u>v. Morton et al.</u> -----LXXXV
International Union of United Mine Workers of America <u>v. Hathaway</u> -----CXVIII	Kindness, James Harold & Sherman Wilson, Jr. <u>v. Frizzell, Kent,</u> Acting Secretary-----XCIV
International Union of United Mine Workers of America <u>v. Morton</u> -----LXXVII	King, David L. & Kathryn <u>v. Bureau</u> of Land Management-----CIX

Table of Suits for Judicial Review

	Page(s)		Page(s)
King, John J. <u>v.</u> Udall-----	LXXXV, XCIX	La Rue, W. Dalton, Sr., & Juanita S. <u>v.</u> U.S. & Morton <u>et al.</u> -----	LXXXVI
King, John J., <u>et al.</u> <u>v.</u> Udall-----	LXXXVI	Laughlin, Donald J. <u>v.</u> Kleppe, Thomas S., Individually & as Secretary of the Interior, <u>et al.</u> -----	LXXXVII
King, John J. & Dorothy W. <u>v.</u> Udall-----	LXXXVI	Lawler, Robert, <u>et al.</u> <u>v.</u> Hickel-----	XCVIII
King, William C. <u>v.</u> U.S. & Secretary of the Interior <u>et al.</u> -----	CIX	L. B. Sanford, Inc. <u>v.</u> U.S.-----	LXXXVII
Kiowa Business Committee <u>et al.</u> <u>v.</u> DOI <u>et al.</u> -----	LXVII	Learned, James R., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----	LXXXVII
Kirkpatrick Oil & Gas Co. <u>v.</u> U.S. & Thomas S. Kleppe-----	LXXXVI	Lee, Robert B. <u>v.</u> Watt-----	LXXXVII
Klatt, Margaret L. <u>v.</u> Kleppe, Thomas S., Individually & in his official capacity as Secretary of the Interior <u>et al.</u> -----	LXXXVI	Lemaire, Bruce <u>v.</u> Watt-----	LXXXVII
Knowlton, Elsie Marie & Horace J. <u>v.</u> Hickel-----	CX	Lewis, Anita Sampson <u>v.</u> Andrus-----	CXVIII
Kobbeman, Ester J., as Executrix for Estate of Clyde K. Kobbeman <u>v.</u> Watt <u>et al.</u> -----	LXVIII	Lewis, Betty J. <u>v.</u> Udall-----	XC
Koch, James & Resource Services Co. <u>v.</u> Watt <u>et al.</u> -----	LXXX	Lewis, Gary Carson, etc., <u>et al.</u> <u>v.</u> General Services Admin. <u>et al.</u> -----	XCIII
Kohl, Charles W. & Cora A. <u>v.</u> Yurich, Steve & Morton, <u>et al.</u> -----	CX	Lewis, Perley M., <u>et al.</u> <u>v.</u> Udall-----	LXXXVII
Krueger, Max L. <u>v.</u> Morton-----	LXIX	Lewis, Perley M., <u>et ux.</u> <u>v.</u> Udall <u>et al.</u> -----	LXXXVII
Krueger, Max <u>v.</u> Seaton-----	LXXXVI	Lewis, Ruth Pinto, Individually & as the Administratrix of the Estate of Ignacio Pinto <u>v.</u> Kleppe, Thomas S., Secretary of the Interior, & U.S.-----	LXXXVII
Krumtum, James M. & Cale M. Shearer <u>v.</u> Udall <u>et al.</u> -----	LXXXVI	Lichtenstein, Dr. Heinz & Ursula, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----	LXXXVIII
KVK Partnership <u>v.</u> Watt & Jeanette G. Hall-----	LXXXVI	Lindgren, Roy <u>v.</u> Andrus-----	LXXXVII
Laatz, Gordon W. & Alleyne J. <u>v.</u> Morton <u>et al.</u> -----	XCIX	Ling, Warren Dale & Francis Miles <u>v.</u> Frizzell, Kent, Acting Secretary-----	LXXXIX
Lade, Richard M., Attorney in Fact for Santa Fe Pacific R.R. <u>v.</u> Udall <u>et al.</u> -----	LXXXVI	Linn Land Co. <u>et al.</u> <u>v.</u> Udall-----	LXXIX, LXXXVII, XCVI, C
Laden, George C., Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, Heirs of George H. Wedekind, Deceased <u>v.</u> Morton <u>et al.</u> -----	CII	Lisco, Barbara C. <u>v.</u> Hathaway <u>et al.</u> -----	XCVII
Laeser, Carolyn W. <u>v.</u> U.S., Watt, <u>et al.</u> -----	LXXXVI	Liss, Merwin E. <u>v.</u> Seaton-----	LXXIV
La Fortuna Uranium Mines, Inc. <u>v.</u> Seaton-----	CVII	Lochner, Floyd O., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXXVII
Lamp, Benson J. <u>v.</u> Andrus <u>et al.</u> -----	LXXVIII	Locke, Madison, <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----	LXXXVII
Lance, Richard Dean <u>v.</u> Udall <u>et al.</u> -----	CX	Longhat, Edward, Clara & Alice <u>v.</u> Andrus-----	CI
Landis, Paul H., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----	LXXVI	Lord, Blaine J., <u>et al.</u> <u>v.</u> Helmandollar <u>et al.</u> -----	CV
Lane Minerals, Inc. <u>v.</u> Udall <u>et al.</u> -----	CX	Lost Polack Mining & Exploration Co. <u>v.</u> Andrus-----	CX
Larsen, Ethel Schell & Minerals Trust Corp. <u>v.</u> Morton-----	CX	Lowey, Frederick W., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----	LXXXVIII
Larsen, George M., <u>et al.</u> <u>v.</u> Udall-----	LXXXVI	Lucas, Leland Murray <u>v.</u> Udall <u>et al.</u> -----	LXXXVIII
La Rue, W. Dalton, Sr. <u>v.</u> Udall-----	LXXXVI	Lujan, Frank <u>v.</u> DOI-----	LXXXVIII
		Lutey, Bess May, <u>et al.</u> <u>v.</u> Dept. of Agriculture, BLM, <u>et al.</u> -----	LXXXVIII
		Lutzenhiser, Earl M. & Leo J. Kottas <u>v.</u> Udall <u>et al.</u> -----	LXXXVI

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
MacCracken, Janet E., et al. v. Watt et al.-----LXXXIV	Maher, Charles & L. Franklin Mader v. Morton-----CX
MacIsaac, Joseph F., et al. v. Morton-----LXXXVIII	Maisano, Joseph & Jean v. Morton et al.-----XCIX
McBride, Norman Lewis, Assignor & George Rodda, Jr., Assignee v. Sec- retary of the Interior et al.-----XCVIII	Marathon Oil Co. v. Morton et al.-----LXIX, LXXXIX
McCall, William A. v. Morton et al.-----CX	Marcinko, Edward v. Watt et al.-----LXXXIX
McCall, William A., Sr., The Dredge Corp. & Olaf H. Nelson v. Boyles, John F., et al.-----CX	Matchett, Roy L. v. U.S.-----LXXXIX
McCall, William A., Sr. & the Estate of Olaf Henry Nelson, Deceased v. Boyles, John S., District Manager, Bureau of Land Management, et al.-----CX	Mathis, Billy, et al. v. Udall et al.-----LXXXIX
McCarthy, Robert E., Successor to Walter E. Beck v. Noren, Leonard E., et al.-----XCIV	Matin, Helen Pratt, et al. v. Johnson, Supt., Osage Ind. Agency & Udall-----LXX
McClarty, Kenneth v. Udall et al.-----CX	Matthews, George C. v. Executive Dir., BLM-----LXXXIX
McDade, James W. v. Morton-----LXXXVIII	Matthews, Guy & Willa v. Watt-----LXXXIX
McDonald, Maude E. & Harriet S. Walsh v. Andrus et al.-----CIII	May, Alvin M. v. Udall et al.-----CX
McDonald, Richard E., et al. v. Watt et al.-----LXXXVIII	May, Ralph E. v. Udall-----LXXXIX
McGahan, Kenneth v. Udall-----LXXXVII	Mecham, Allan E., et al. v. Udall et al.-----LXXXIX
McGarry, Sheridan L. v. Udall-----LXXXVIII	Meeks, Albert v. Rowland-----CI
McGrath, William J. v. Watt et al.-----LXVIII	Megna, Salvatore, Guardian, etc. v. Seaton-----LXXXIX
McHenry, Edward T. & Ruth E. v. Andrus et al.-----CX	Melcher, John & Ruth E. v. Zaidlicz, Edwin, Montana Dir. of BLM et al.-----LXXXVI
McIntosh, Samuel W. v. Udall-----XCI	Melluzzo, Frank & Wanita v. Andrus-----CX
McIntyre, Carmel J. v. Andrus et al.-----LXXXVIII	Melluzzo, Frank & Wanita v. Morton-----CX
McKenna, Elgin A. (Mrs.), as Execu- trix of the Estate of Patrick A. McKenna, Deceased v. Udall-----LXXXVIII	Melluzzo, Frank & Wanita v. U.S. & Watt-----CXI
McKenna, Elgin A. (Mrs.), Widow & Successor in Interest of Patrick A. McKenna, Deceased v. Hickel et al.-----LXXXVIII	Mendenhall, Robert L. v. U.S., Andrus, et al.-----CXIII
McKenna, Patrick A. v. Davis-----LXXVI	Mesa Petroleum Co. v. Andrus et al.-----XC
McKinnon, A. G. v. U.S.-----LXXXVIII	Messbauer, Arthur J. v. Watt et al.-----XC
McLean, Kenneth Samuel v. Hickel-----LXXXVIII	Meva Corp. v. U.S.-----XC
McMaster, Raymond C. v. U.S., DOI, Secretary of the Interior & BIA-----LXXXVIII	Meyers, Richard W., et al. v. Watt et al.-----LXX
McNeil, Wade v. Leonard et al.-----LXXXIX	Michigan Wisconsin Pipeline Co. v. Watt et al.-----XC
McNeil, Wade v. Seaton-----LXXXIX	Mickunas, Albert P. v. Morton et al.-----XC
McNeil, Wade v. Udall-----LXXXIX	Miller, Donald E. v. Hickel et al.-----XC
McTiernan, J. W. v. Franklin, Acting Secretary of the Interior-----LXXXIX	Miller, Duncan v. Adjudicative Officers of Billings BLM (Civil No. 74-53-BLG)-----XCII
McTiernan, J. W. v. Morton-----LXXXIX	Miller, Duncan v. Adjudicative Officers of Billings BLM (Civil No. 1146)-----XCII
	Miller, Duncan v. Adjudicative Officers of the BLM, DOI (Civil No. 1757-72)-----XCII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Miller, Duncan <u>v.</u> Adjudicative Officers of U.S. Geological Survey, Tulsa <u>et al.</u> -----XCII	Miller, Duncan <u>v.</u> Udall (A-29312)-----XC
Miller, Duncan <u>v.</u> Admin. Officers of BLM & DOI (Civ. No. 1035-73)-----XCII	Miller, Duncan <u>v.</u> Udall (A-29365 <u>et al.</u>)-----XCII
Miller, Duncan <u>v.</u> Admin. Officers, California BLM-----XCII	Miller, Duncan <u>v.</u> Udall (A-29900 <u>et al.</u>)-----XCII
Miller, Duncan <u>v.</u> BLM, DOI, Secretary of the Interior (Civ. No. 74-1488)-----XCII	Miller, Duncan <u>v.</u> Udall (A-30122 <u>et al.</u>)-----XCII
Miller, Duncan <u>v.</u> The Board of Land Appeals, DOI-----XCII	Miller, Duncan <u>v.</u> Udall (A-30213 <u>et al.</u>)-----XCII
Miller, Duncan <u>v.</u> Director of BLM-----XCI	Miller, Duncan <u>v.</u> Udall (A-30270)-----XCII
Miller, Duncan <u>v.</u> Officers of BLM & DOI-----XCI	Miller, Duncan <u>v.</u> Udall (A-30393)-----XCII
Miller, Duncan <u>v.</u> Officers of the DOI (Civil No. 76-48 BLG)-----XCII	Miller, Duncan <u>v.</u> Udall (A-30434)-----XCII
Miller, Duncan <u>v.</u> Operating Officers of BLM, DOI & Secretary of the Interior (Nominal Defendant)-----XCII	Miller, Duncan <u>v.</u> Udall (A-30517)-----XCII
Miller, Duncan <u>v.</u> Seaton (A-27620)-----XC	Miller, Duncan <u>v.</u> Udall (A-30546, A-30566 & 73 I.D. 211)-----XCII
Miller, Duncan <u>v.</u> Secretary of the Interior (A-30924 <u>et al.</u>)-----XCI	Miller, Duncan <u>v.</u> Udall (A-30570)-----XCII
Miller, Duncan <u>v.</u> Secretary of the Interior & His Officers (A-30628) <u>et al.</u> -----XCI	Miller, Duncan <u>v.</u> Udall (A-30891)-----XCII
Miller, Duncan <u>v.</u> The Honorable Sec- retaries of the Interior, etc., <u>et al.</u> (Civil No. 75-0905)-----XCII	Mimick, John R., <u>et al.</u> <u>v.</u> Kleppe-----XCII
Miller, Duncan <u>v.</u> The Honorable Sec- retaries of the Interior, etc., <u>et al.</u> (Civil No. 75-2138)-----XCII	Mineral Ventures, Ltd. <u>v.</u> Secretary of the Interior-----CXI
Miller, Duncan <u>v.</u> Udall, 69 I.D. 14 (1962)-----XCVI	Minerals Trust Corp. <u>v.</u> Udall-----CVIII
Miller, Duncan <u>v.</u> Udall, 70 I.D. 1 (1963)-----XCI	Mitchell Energy Corp. <u>v.</u> Andrus-----XCII
Miller, Duncan <u>v.</u> Udall (A-28008 <u>et al.</u>)-----XC	Mollohan, H. D., <u>et al.</u> <u>v.</u> Gray <u>et al.</u> -----XCII
Miller, Duncan <u>v.</u> Udall (A-28057 <u>et al.</u>)-----XC	Mollring, Howard S. <u>v.</u> Keough <u>et al.</u> -----XCII
Miller, Duncan <u>v.</u> Udall (A-28172 <u>et al.</u>)-----XC	Monington, Donald E. <u>v.</u> Andrus <u>et al.</u> -----XCII
Miller, Duncan <u>v.</u> Udall (A-28509)-----XC	Monsanto Co. <u>v.</u> Watt-----XCII
Miller, Duncan <u>v.</u> Udall (A-28586 <u>et al.</u>)-----XC	Monsanto Co. <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----CII
Miller, Duncan <u>v.</u> Udall (A-28647)-----XC	Morgan, Burton D., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----CXVII
Miller, Duncan <u>v.</u> Udall (A-28909 <u>et al.</u>)-----LXXXVII	Morgan, Henry S. <u>v.</u> Udall-----XCIII
Miller, Duncan <u>v.</u> Udall (A-28937 <u>et al.</u>)-----XC	Morris, G. Patrick, Joan E. Roth, Elise L. Neeley, <u>et al.</u> <u>v.</u> U.S. & Morton-----CXI
Miller, Duncan <u>v.</u> Udall (A-29251)-----XCVIII	Morrison-Knudsen Co. <u>v.</u> U.S.-----XCIII
	Moseley, Ernest E. <u>v.</u> Udall-----CXI
	Mosely, Jack M., Charles S. Hertz <u>v.</u> DOI <u>et al.</u> -----XCIII
	Moss, Mildred A., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCIII
	Mounce, Milton L. <u>v.</u> Andrus <u>et al.</u> -----LXXXV
	Mountain Enterprises Coal Co. <u>v.</u> Secretary of the Interior-----XCIII
	Mountain States Resources <u>v.</u> Morton-----CXVII
	Moves Camp, James, <u>et al.</u> <u>v.</u> Andrus-----XCIII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Mulkern, G. C. (Tom) <u>v.</u> Keough-----CXI	Oil Shale Corp., The, <u>et al.</u> <u>v.</u> Sec.-----CV
Mullins, Howard <u>v.</u> Andrus-----XCVI	Oil Shale Corp., The, <u>et al.</u> <u>v.</u> Udall-----CV
Multiple Use, Inc. <u>v.</u> Morton-----CXIII	Old Ben Coal Corp. <u>v.</u> Interior Board of Mine Operations Appeals <u>et al.</u> -----XCIV
Munsey, Glenn <u>v.</u> Andrus-----XCIII	Oldaker, Wilma <u>v.</u> Udall-----CXI
Munsey, Glenn, Arnold & Earnest Scott, Miners <u>v.</u> Morton <u>et al.</u> -----XCIII	Ondola, George & Susie, Charlie John, <u>et al.</u> <u>v.</u> Hathaway <u>et al.</u> -----LXIX
Murer, Christian F. <u>v.</u> Morton-----CXI	O'Neill, Joseph I., Jr. <u>v.</u> Udall-----XCV
Naartex Consulting Corp. <u>v.</u> Watt <u>et al.</u> -----XCIII	Oregon Portland Cement Co. <u>v.</u> Watt <u>et al.</u> -----XCV
Napier, Barnette T., <u>et al.</u> <u>v.</u> Sec.-----CV	Osborne, J. R. <u>v.</u> Hammitt-----CVI
National Motor Service Co., Successor to Gary K. Lloyd <u>v.</u> Morton-----CXI	Osborne, J. R., Individually & on behalf of R. R. Borders, <u>et al.</u> <u>v.</u> Morton <u>et al.</u> -----CXI
Native Village of Tyonek <u>v.</u> Bennett-----XCIV	Ounalashka Corp., for & on behalf of its Shareholders <u>v.</u> Kleppe <u>et al.</u> -----XCV
Navajo Tribe of Indians <u>v.</u> Morton <u>et al.</u> -----XCIII	Oyate, Inc., <u>et al.</u> <u>v.</u> Morton-----XCV
Neff, Charles Y. <u>v.</u> Watt <u>et al.</u> -----XCIII	Pacific Oil Co., a Corp. <u>v.</u> Udall-----LXXXVI
Nelson, Leonard F. <u>v.</u> Morton <u>et al.</u> -----CXI	Pacific Power & Light Co. <u>v.</u> Andrus-----XCV
Neuhoff, Edward D. & E. L. Cord <u>v.</u> Morton-----LXXV	Pagedas, Anthony C., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----LXXXIII
Nevada Pacific Co. <u>et al.</u> <u>v.</u> Andrus-----XCIII	Pagedas, Elizabeth, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCV
Nevitt, Richard L. <u>v.</u> Andrus <u>et al.</u> -----XCIII	Paine, Eugene C., <u>et al.</u> <u>v.</u> Udall-----XCV
New England Fish Co. <u>v.</u> Sorenson <u>et al.</u> -----XCIII	Palisades Contractors <u>et al.</u> <u>v.</u> U.S.-----LXXXIV
New Jersey Zinc Corp., The, a Del. Corp. <u>v.</u> Udall-----CXI	Pallin, Irene Mitchell <u>v.</u> U.S. & Edward Elmer Mitchell, Jr.-----XCV
New York State Natural Gas Corp. <u>v.</u> Udall-----LXXI	Pan American Petroleum Corp. <u>v.</u> Udall-----XCV
Nickol, W. G. & Eva Rose <u>v.</u> U.S. & Morton-----CXI	Pan American Petroleum Corp. & Gonsales, Charles B. <u>v.</u> Udall-----LXXX
Nicholas, Jess H., Jr. <u>v.</u> Udall-----XCIV	Parker, Doris Ann Whitetail, <u>et al.</u> <u>v.</u> Pappan <u>et al.</u> -----CXVI
Nielson, Jay <u>v.</u> Keough <u>et al.</u> -----CXV	Parks, Jack, W. <u>v.</u> Kleppe-----XCV
Nininger, Robert D. <u>v.</u> Morton & Kenneth J. Sire-----XCIV	Pashayan, Charles S., Lillie A., Charles S., Jr., & Suzanne Lillie, Co-partners, d/b/a Monturah Co. <u>v.</u> Morton-----XCIII
NL Industries, Inc. <u>v.</u> Watt-----XCIV	Paul Jarvis, Inc. <u>v.</u> U.S.-----XCV
Noren, Leonard E. <u>v.</u> Beck-----XCIV	Peabody Coal Co. <u>v.</u> Andrus <u>et al.</u> -----XCV
North Star Aviation Corp. <u>v.</u> U.S.-----XCIV	Pease, Louise A. (Mrs.) <u>v.</u> Udall-----XCIV
Northwest Citizens for Wilderness Mining Co. <u>v.</u> Bureau of Land Man- agement <u>et al.</u> -----XCIV	Pemberton, Mary C. <u>v.</u> Andrus-----XCV
O'Callaghan, Lloyd, Sr., Individually & as Executor of the Estate of Ross O'Callaghan <u>v.</u> Morton <u>et al.</u> -----CXI	Perry & Wallis, Inc. <u>v.</u> U.S.-----XCV
Oelschlaeger, Richard L. <u>v.</u> Udall-----XCIV	Peter Kiewit Sons' Co. <u>v.</u> U.S.-----CXVI
O'Grady, Thomas James, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCIV	Peters, Curtis D. <u>v.</u> U.S. & Morton-----CXVI
Oil Resources, Inc. <u>v.</u> Andrus-----XCIV	

Table of Suits for Judicial Review

Page(s)	Page(s)
Peterson, Kent E. <u>v. Andrus et al.</u> -----XCVI	Redwood Empire Land & Royalty Co. <u>v. Watt</u> -----XCVII
Peterson, Virgil V. <u>v. DOI, Andrus</u> -----XCVI	Redwood Empire Land & Royalty Co. <u>v. Watt et al.</u> -----XCVII
Petroleum Ownership Map Co. <u>v. U.S.</u> -----XCVI	Reed, Cecil R. <u>v. Udall et al.</u> -----CXII
Phillips, Cecil H., <u>et al. v. Udall</u> -----CXVI	Reed, George, Sr. <u>v. Morton et al.</u> -----XCVII
Pittsburgh Pacific Co. <u>v. U.S., Andrus, et al.</u> -----CXII	Reed, Wallace, <u>et al. v. DOI et al.</u> -----LXXXIV
Pocahontas Fuel Co. <u>v. Andrus</u> -----XCVI	Reeves, Alvin B., <u>et al. v. Morton & The City of Phoenix</u> -----XCVI
Pomeroy, John M. <u>v. Beck</u> -----XCVI	Reeves, Henry E. <u>v. Morton et al.</u> -----XCVII
Poncía, Paul C., Opal L., John C. & Dorothy <u>v. Morton</u> -----CXII	Reichhold Energy Corp. <u>v. Andrus</u> -----XCVII
Port Blakely Mill Co. <u>v. U.S.</u> -----XCVI	Reitz Coal Co. <u>v. Andrus</u> -----XCVII
Powell, Benson M. III <u>v. DOI et al.</u> -----LXVIII	Reliable Coal Corp. <u>v. Morton et al.</u> -----XCVII
Power, L. O., Ellis J. & Lois Dover & Noble Ribelin <u>v. U.S. & Kent Frizzell, Acting Secretary</u> -----XCVI	Relyea, George A. & Dorothy <u>v. Udall</u> -----CXII
Pressentin, E. V. <u>v. Seaton</u> -----CXII	Republic Steel Corp. <u>v. Interior Board of Mine Operations Appeals</u> -----XCVII
Pressentin, E. V., <u>et al. v. Seaton</u> -----CXII	Reuling, William C. <u>v. Watt et al.</u> -----XCVIII
Pressentin, E. V., Fred J. Martin, Administrator of H. A. Martin Estate <u>v. Udall & Stoddard</u> -----CXII	Rhyneer, George S., <u>et al. v. Andrus et al.</u> -----LXVII
Price, Amanda <u>v. Udall</u> -----CIII	Rice, Tony, George W. Zarak, Arlene Zarak, William J. Zarak, Jr., & Darlene Zarak <u>v. Morton et al.</u> -----CXVIII
Price, Robert <u>v. Morton et al.</u> -----LXXVI	Richards, Theodore A. & Judith Miller <u>v. Secretary of the Interior & Seldovia Native Ass'n, Inc.</u> -----LXVII
Property Management Co. <u>v. Udall</u> -----LXXXVII, XCVI	Richardson, John L. <u>v. Udall</u> -----C
Pruess, C. F., Sr. <u>v. Udall</u> -----CXII	Richfield Oil Corp. <u>v. Seaton</u> -----XCVIII
Ptasynski, Nola Grace <u>v. Hathaway et al.</u> -----XCVII	Ridge, W. L. <u>v. U.S.</u> -----CXVII
Puckett, Robert E. <u>v. Udall</u> -----XCVII	Rife, Simon A. <u>v. Watt et al.</u> -----XCVIII
Pulliam, William D., <u>et al. v. Sec.</u> -----CXII	Riley Hall Coal Co. <u>v. Andrus</u> -----XCVIII
Ram Petroleums, Inc. <u>v. Andrus et al.</u> -----XCVII	Ringstad, Mark B., <u>et al. v. U.S., Secretary of the Interior & The Arctic Slope Regional Corp.</u> -----LXXIII
Ramirez, Teresa, Executor of Estate of Lola Ramirez <u>v. Secretary of the Interior</u> -----LXXXIV	Rinker, LaPreal C. <u>v. Watt et al.</u> -----XCVIII
Ramoco, Inc. & Ram Petroleums, Inc. <u>v. Andrus et al.</u> -----XCVII	Ritter, Willis W. <u>v. Morton et al.</u> -----LXXIX
Ramsey, Chester Lee <u>v. Andrus et al.</u> -----CXII	River Queen Corp., an Arizona Corp., d/b/a River Queen Resort <u>v. Kleppe, Thomas S., Individually & as Secretary of the Interior, et al.</u> -----LXXXVII
Ramsey, Marvin C. & Vesta Ruth <u>v. Sec. of the Interior</u> -----CXII	Robedeaux, Oneta Lamb, <u>et al. v. Morton</u> -----XCVIII
Ramsher Mining & Engineering Co. <u>v. Secretary of the Interior & BLM</u> -----CXII	Roberts Brothers Coal Co. <u>v. Andrus, et al.</u> -----XCVIII
Ramstad, Stuart Grant <u>v. Watt et al.</u> -----XCVII	Roberts, Kenneth, <u>et al. v. Morton et al.</u> -----CXIV
Rawls, Edith, Individually & as Administratrix of the Estate of M. D. Rawls, Deceased, & Emma Mae Cox, a widow <u>v. U.S., Morton, et al.</u> -----LXIX	Robertson, Evelyn R. <u>v. Udall</u> -----XCVIII
Ray D. Bolander Co. <u>v. U.S.</u> -----XCVII	Robinette, Amos D. <u>v. Morton et al.</u> -----CXII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Robinson, Rene, by & through her Guardian Ad Litem, Nancy Clifford v. Andrus, Cecil, Gretchen Robinson & Trixi Lynn Robinson Harris-----XCVIII	Schraier, Charles v. Udall-----C
Rocky Mountain Oil & Gas Ass'n v. Andrus et al.-----LXXXIV	Schuck, Joseph M. v. Helmandollar-----C
Rodgers, R. E. & Barbara v. Andrus-----CXII	Schuck, Joseph M. v. Sec.-----C
Rogers, M. E. v. U.S., Andrus, et al.-----XCVIII	Schulein, Robert v. Udall-----LXXXII
Rosebud Coal Sales Co. v. Andrus et al.-----LXXIII, XCIX	Scott, Clara Ramsey v. U.S. et al.-----XCVII
Rosenkranz, Ludwig G. v. Forest Service et al.-----CXII	Seal & Co., Inc. v. U.S.-----C
Ross, James M., et al. v. Andrus et al.-----LXXXVIII	Sealaska Corp. v. Secretary of the Interior et al.-----LXXXII
Rouse, Alice W. v. DOI & Watt-----CXII	Seeley, Charles L., et al. v. Sec.-----CXIII
Rowe, Richard W. & Daniel Gaudiane v. Hathaway-----XCIX	Semanko, Robert, et al. v. Watt et al.-----C
Roybal, Frank, Jr. v. Andrus-----XCIX	Sessions, Inc. v. Morton et al.-----C
Rukke, Robert A., et al. v. U.S.-----CXIII	Sette, James S. v. Secretary of the Interior-----CXIII
Rundle, Edgar v. Udall-----XCIX	Sexton, John J. v. U.S., Morton, et al.-----C
Runnells, John S. v. Andrus et al.-----XCV	Shaw, John W. v. Udall-----CI
Running Horse, Mary Hit Him v. Udall-----XCIX	Shaw, William T., Jr., et al. v. Morton et al.-----CXVI
Russell, Dan S. v. McGuire, John R., Individually & as Chief, Forest Service, DOA, et al.-----CXIII	Shell Oil Co. v. DOI-----CXVIII
Sachen, Alex, et al. v. Watt et al.-----XCIX	Shell Oil Co. v. Udall-----LXXIII, CI
Safarik, Louise v. Udall-----LXXIX, XCIX	Shell Oil Co. & D. A. Shale, Inc. v. Morton-----CXIV
Safve, Rune E. S. v. Sec. et al.-----XCIX	Shell Oil Co. et al. v. Udall et al.-----CXVII
Sainberg, Robert B., Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Morton-----CXIII	Sherman, Helen Edmo et al. v. Andrus et al.-----LXXIII
Sam, Christine & Nancy Judge v. Kleppe-----LXXXV	Shern, Michael v. Kleppe et al.-----CI
Sam, Robert v. U.S. et al.-----LXXXV	Shoup, Leo E. v. Udall-----CVII
Samuel, Louis v. Morton-----XCIX	Shuck, Thomas R. v. Helmandollar-----CXIII
Sandoval, B. F., Jr. v. Udall-----XCIX	Simons, Earlene Ida Abbott v. Udall et al.-----CXV
Santa Fe Sand & Gravel Co. v. Rasmussen, Boyd L., et al.-----XCIX	Simplot Industries, Inc. v. Udall-----CXIV
Santor, Kenneth F. v. Morton et al.-----XCIX	Sinclair Oil & Gas Co. v. Udall et al.-----CI
Saurers, Edwin R., et al. v. Udall-----CXIII	Sink, Charles T. v. Kleppe & MESA-----CI
Savage, John W. v. Udall-----CV	Skelly Oil Co. v. Morton et al.-----CI
Schade, Lloyd v. Andrus, State of Alaska-----C	Smith, Eldon L. v. Hickel-----CI
Schmand, Casper Joseph v. Udall-----LXXXVII, C	Smith, James W. v. U.S., Andrus, et al.-----CI
Schmidt, Ann D. v. Udall-----C	Smith, Mardelle M. & Sherman C. v. Andrus et al.-----CI
	Smith, Reid v. Udall etc.-----CVII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Snow, George Val & Kathleen v. Andrus <u>et al.</u> -----CII	Supron Energy Corp., Southland Royalty Co. & Consolidated O&G Co. v. Andrus-----CIII
Snyder, Ruth, Administratrix of the Estate of C. F. Snyder, Deceased, <u>et al.</u> v. Udall-----CXIII	Swanson, Elmer H. v. Morton-----CXIII
Sorensen, Walter M. v. Andrus <u>et al.</u> -----CII	Swanson, Elmer H. & Livingston Silver, Inc. v. Andrus-----CXIII
South Dakota, State of v. Andrus <u>et al.</u> -----CXII	Tallman, James K., <u>et al.</u> v. Udall-----CIII
Southern Pacific Co. v. Hickel-----CII	Tanacross, Inc. v. Watt <u>et al.</u> -----CIII
Southern Pacific Co. <u>et al.</u> v. Morton <u>et al.</u> -----CXIII	(Tate), Viola Atewooftakewa, <u>et al.</u> v. Udall-----LXXIII
Southport Land & Commercial Co. v. Udall <u>et al.</u> -----CII	Taunah, Bert, <u>et al.</u> v. Udall-----XCVII
Southwest Welding v. U.S.-----CII	Tempest Mining Corp. v. U.S., DOI, BLM, & Secretary of the Interior-----CXIII
Southwestern Petroleum Corp. v. Udall-----LXXXI, CII	Texaco, Inc., a Corp. v. Secretary of the Interior-----CIII
Standard Oil Co. of Calif. v. Hickel <u>et al.</u> -----CII	Texas Construction Co. v. U.S.-----CIII
Standard Oil Co. of Calif. v. Morton <u>et al.</u> -----CII	Thom Properties Inc. d/b/a Toke Cleaners & Launderers v. U.S., DOI, BIA-----CIV
Stanek, George, <u>et al.</u> v. U.S.-----XCVI	Thomas, Albert & Ellora v. Morton <u>et al.</u> -----CIII
Starks, John Walter v. Watt-----CII	Thorne, Rupert v. Watt-----CIII
Steele, J. A., <u>et al.</u> v. Kleppe, Thomas S., in his capacity as Sec- retary of the Interior & the U.S.-----LXX	Thoroughfare Coal Co. v. Watt-----CIII
Stegman, Ross v. Udall-----CII	Thor-Westcliffe Development, Inc. v. Udall-----CIV
Stevens, Clarence T. & Mary D. v. Hickel-----CXIII	Thor-Westcliffe Development, Inc. v. Udall <u>et al.</u> -----CIV
Stewart, Charles E. v. Penny <u>et al.</u> -----CXIII	Tollage Creek Elkhorn Mining Co. v. Andrus-----CIV
Stewart, Joe v. Andrus-----CII	Tooisgah, Jonathan Morris & Velma v. Kleppe-----CIV
Stewart, Nancy L., <u>et al.</u> v. Watt <u>et al.</u> -----CII	Trabal, Jose, Dr. v. Watt <u>et al.</u> -----LXVIII
Stewart Capital Corp. <u>et al.</u> v. Andrus-----LXXVII	Tree Land Nursery, Inc. v. U.S.-----CIV
Stewart Capital Corp. <u>et al.</u> v. Martinez, Raul, Chief, Minerals Sec., New Mexico State Office, BLM-----XCVI	Turner, William M. v. Watt-----CIV
Stickelman, Elaine S. v. U.S. <u>et al.</u> -----CII	Tyee Construction Co. v. U.S.-----CIV
Still, Edwin, <u>et al.</u> v. U.S.-----LXXXI	Umpleby, Joseph B., <u>et al.</u> v. Udall-----CV, CXV
Storper, Bernard S. v. Watt <u>et al.</u> -----CIII	Underwood, C. Fred, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior-----CXIII
Stratman, Omar v. DOI, BLM-----CIII	Union Oil Co. of Calif. v. Andrus-----CIV
Stroock, Marta F. v. Watt <u>et al.</u> -----CIII	Union Oil Co. of Calif. v. Udall-----CIV, CV
Sullivan, Cornelius D. & Josie L. v. U.S.-----CXIII	Union Oil Co. of Calif. v. Watt <u>et al.</u> -----CIV
Superior Oil Co. v. Bennett-----XCIV	Union Oil Co. of Calif., a Corp. v. Udall-----CV
Superior Oil Co. <u>et al.</u> , The v. Udall-----CIV	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
United Mine Workers of America <u>v. Andrus</u> (No. 77-1090)-----LXXVII	Utah Power & Light Co. <u>v. Morton et al.</u> -----CXV
United Mine Workers of America <u>v. Andrus</u> (No. 77-1839)-----LXVIII	Utah Wilderness Ass'n <u>et al.</u> <u>v.</u> <u>Watt et al.</u> -----CXV
United Mine Workers of America <u>v. Andrus</u> (No. 77-1840)-----XCIV	Vaden, Henrietta Roberts, a/k/a Henrietta R. Vaden <u>v. Kleppe et al.</u> -----CXV
United Mine Workers of America (Local Union No. 1993) <u>v. Andrus</u> -----CV	Vaile, Eunice Lucero <u>v. Morton et al.</u> -----LXXXVIII
United Mine Workers of America <u>v. Interior Board of Mine Operations Appeals</u> -----LXXVII	Vaile, Eunice Lucero <u>v. Udall</u> -----LXXXVIII
United Mine Workers of America <u>v. Kleppe</u> (No. 76-1208)-----LXXIII	Vaughey, E. A. <u>v. Seaton</u> -----CXV
United Mine Workers of America <u>v. Kleppe</u> (No. 76-1377)-----CV	Verchota, Robert J. <u>v. Watt et al.</u> -----CXV
United Mine Workers of America <u>v. Kleppe</u> (No. 76-1980)-----LXXVI	Verrue, Alfred N. <u>v. U.S. et al.</u> -----CXIV
United Mine Workers of America (Dist. 6) <u>et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals</u> -----LXXXII	Virginia Iron, Coal & Coke Co. <u>v. Andrus</u> -----CXV
United Mine Workers of America <u>v. U.S. Interior Board of Mine Operations Appeals</u> (75-1852)-----XCIV	Vitek, Richard K., <u>et al.</u> <u>v. Andrus et al.</u> -----LXXXVIII
U.S. <u>v. Adams</u> , Alonzo A.-----CV	Wackerli, Burt & Lueva G., <u>et al.</u> <u>v. Udall et al.</u> -----CXV
U.S. <u>v. Bryant</u> , Raymond E.-----CVII	Wagner, Richard, <u>et al. v. U.S. et al.</u> -----LXXIV
U.S. <u>v. Brubaker-Mann, Inc. et al.</u> -----CVI	Wahwersee, Mattie <u>v. Kleppe</u> -----CXVI
U.S. <u>v. Buell</u> , Carl M. & Lloyd F. d/b/a Buell Brothers-----LXXII	Walker, Jack A. <u>v. U.S. & Udall</u> -----CXV
U.S. <u>v. Coleman</u> , Alfred-----CVII	Wallis, Floyd A. <u>v. Udall</u> -----LXXXIV
U.S. <u>v. Harco Engineering, a Division of Harbor Boat Building Co.</u> -----LXXIV	Ward, Alfred, Irene Ward Wise & Elizabeth Collins <u>v. Frizzell, Kent, Acting Secretary, et al.</u> -----CXV
U.S. <u>v. Haskins</u> , Richard P.-----CIX	Wasserman, Jacob N. <u>v. Udall</u> -----XCIV
U.S. <u>v. Hood Corp. et al.</u> -----LXXXIV	Weardco Construction Corp. <u>v. U.S.</u> -----CXV
U.S. <u>v. House</u> , Charles, Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, Deceased, <u>et al.</u> -----LXXXVIII	Weedon, R. D., Jr. <u>v. Watt et al.</u> -----CXVI
U.S. <u>v. Michener</u> , Raymond T., <u>et al.</u> -----LXXXIV	Weiss, Oscar W. <u>v. Udall</u> -----CXIV
U.S. <u>v. Nevitt</u> , Melvin L.-----CXI	Wells, Thomas C. <u>v. Udall</u> -----CXIV
U.S. <u>v. Nogueira</u> , Edison R., <u>et al.</u> -----CX	Wells, W. C. <u>v. Udall</u> -----XCVIII
U.S. <u>v. Webb</u> , Hiram-----CXIV	West Virginia Highlands Conser- vancy <u>v. Watt et al.</u> -----CXVI
U.S. <u>v. Willcoxson et al.</u> -----CXVI	Western Nuclear, Inc. <u>v. Andrus, Cecil & U.S.</u> -----CXVI
U.S. & Rogers C. B. Morton <u>v.</u> Wharton, Minnie E., <u>et al.</u> -----CXVI	Western Reserves Oil Co. <u>v. Watt et al.</u> -----LXXXIX
Unruh, Paul E. <u>v. Udall et al.</u> -----CXV	Western Slope Carbon, Inc. <u>v. Andrus</u> -----LXXXIII
Utah International <u>v. Andrus</u> -----CXIV	Wheeler, Richard, Jr. <u>v. DOI & Cecil Andrus</u> -----CXVI
Utah Power & Light Co. <u>v. Kleppe</u> -----CXV	White, Vernon O. & Ina C. <u>v. Udall</u> -----CXIV
	White Winter Coals, Inc. <u>v. DOI</u> -----CXVI
	Wichner, Milton <u>v. Andrus et al.</u> -----CXIV
	Wilderness Society, The, McKenzie Flyfishers, <u>et al. v. Andrus</u> -----CXIV

Table of Suits for Judicial Reivew

<u>Page(s)</u>	<u>Page(s)</u>
Willcoxson, Buck <u>v.</u> Henriques-----CXVI	Wooding, Robert B., d/b/a Associated Investors & Auburn Enterprises, Inc. <u>v.</u> Morton -----LXVIII
Willcoxson, Buck <u>v.</u> Udall-----CXVI	Wooding, Robert B., d/b/a Associated Investors & Auburn Enterprises, Inc. <u>v.</u> Kleppe <u>et al.</u> -----LXVIII, CXVII
Willcoxson, Buck <u>v.</u> U.S.-----CXVI	Wright, Hoover H. <u>v.</u> Seaton-----XCV
William A. Smith Contracting Co. <u>v.</u> U.S.-----CXVI	Wyoming, State of, Albert E. King, Comm'r of Public Lands <u>v.</u> Andrus-----CXVIII
William A. Smith Contracting Co., Inc., <u>et al.</u> <u>v.</u> U.S.-----CXVI	Wyoming, State of, & Gulf Oil Corp. <u>v.</u> Udall, etc.-----CV
William F. Klingensmith, Inc. <u>v.</u> U.S.-----CXVII	Yavapai-Prescott Indian Tribe <u>v.</u> Andrus <u>et al.</u> -----LXXXVI
Williams, Leo <u>v.</u> Watt <u>et al.</u> -----CXVI	Young Associates, Inc. <u>v.</u> U.S.-----CXVIII
Wilson Farms Coal Co. <u>v.</u> Andrus-----CXVII	Zapata Coal Corp. <u>v.</u> Andrus-----CXVIII
Wilson, Harry H. <u>v.</u> U.S. & Andrus-----CXVII	Zeigler Coal Co. <u>v.</u> Frizzell, Kent, Acting Secretary-----CXVIII
Winkler, Joseph A. <u>v.</u> Kleppe-----CXVII	Zimmers, Jon F. <u>v.</u> Andrus-----CXIV
Winkler, Joseph A. <u>v.</u> Smith, Marlis E., Trust <u>et al.</u> -----CXVII	Zuckerman, Harry & Mark M. Collins <u>v.</u> Civiletti, Benjamin, Attorney General, <u>et al.</u> -----CXVIII
Winston Ford Co. <u>v.</u> Andrus-----CXVII	Zuckerman, Jack, <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----CXVIII
Wisnak, Inc., an Alaska Corp. <u>v.</u> Kleppe, Secretary of the Interior & U.S.-----CXVII	Zwang, Darrell & Elodymae <u>v.</u> Andrus-----CXIV
Witt, Moss J. <u>v.</u> U.S. <u>et al.</u> -----CI	Zwang, Darrell, <u>et al.</u> <u>v.</u> Udall-----CXVIII
WJM Mining & Development Co. <u>et al.</u> <u>v.</u> Morton-----CXI	Zweifel, Merle I., <u>et al.</u> <u>v.</u> U.S.-----CXIV
Wood, Rodney, <u>et al.</u> <u>v.</u> Udall <u>et al.</u> -----CXIV	

CUMULATIVE INDEX TO SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS
BOTH PUBLISHED AND UNPUBLISHED

The index below is in alphabetical order according to the name of the first party identified in a decision or opinion of the Department. Beginning with January of 1955, all judicial review of departmental decisions and opinions sought by any party are included. The name of the action is listed as it appears on the court docket in each court. Where the decision of the court has been published, the citation is given; if not, the docket number and date of final action taken by the court is set out. If the court issued an opinion in a nonreported case, the fact is indicated; otherwise no opinion was written. Unless otherwise indicated, all suits were commenced in the United States District Court for the District of Columbia and, if appealed, were appealed to the United States Court of Appeals for the District of Columbia Circuit. Finally, if judicial review resulted in a further departmental decision, the departmental decision is cited.

Bill Adams, Horace Chapman, Earl Chapman, IBLA
79-236, Order dated Mar. 10, 1979, dismissing
appeal for lack of jurisdiction

Bill Adams, Horace Chapman & Earl Chapman
v. Cecil D. Andrus, Secretary of the
Interior, Civil No. C-79-0220, D. Utah.
Remanded, Sept. 29, 1980; amended order
Nov. 2, 1980; appeal withdrawn, Feb. 28, 1981.

Scott Q. Adams, 60 IBLA 288, 88 I.D. 1110 (1981)

Scott Q. Adams v. James Watt & Richard
Sundquist, Civil No. 82-35-BLG, D. Mont.
Suit pending.

Adler Construction Co. (On Reconsideration),
67 I.D. 21 (1960)

Adler Construction Co. v. U.S., Cong. 10-60.
Dismissed, 423 F.2d 1362 (1970); rehearing
denied, July 15, 1970; cert. denied, 400 U.S.
993 (1970); rehearing denied, 401 U.S. 949 (1971).

Adler Construction Co. v. U.S., Cong. 5-70.
Trial Comm'r's report accepting & approving the
stipulated agreement filed Sept. 11, 1972.

Walter Adomkus, 67 IBLA 177 (1982)

Walter Adomkus v. James Watt, Secretary of the
Interior, Civil No. 82-260 BLG. Suit pending.

Jake Ahtone, Everett Rhoades, Mae Johnson, Linn
Pauahty, Oscar Tsoodle v. James A. Canan,
Acting Dep. Ass't Secretary--Indian Affairs,
& Theodore C. Krenzke, Acting Dep. Comm'r of
Indian Affairs, 8 IBIA 278 (1981)

Kiowa Business Committee, Jake Ahtone,
Everett Rhoades, Mae Johnson, Linn Pauahty,
Oscar Tsoodle v. The Dept. of the Interior,
James Watt, Secretary, Civil No. CIV-81-386D,
W.D. Okla. Suit pending.

Estate of John J. Akers, 1 IBIA 8, 77 I.D. 268
(1970)

Dolly Cusker Akers v. The Dept. of the Interior,
Civil No. 907, D. Mont. Judgment for defendant,
Sept. 17, 1971; order staying execution of judg-
ment for 30 days issued Oct. 15, 1971; appeal
dismissed for lack of prosecution, May 3, 1972;
appeal reinstated, June 29, 1972; aff'd,
499 F.2d 44 (9th Cir. 1974).

State of Alaska v. Juneau Area Acting Dir.,
Bureau of Indian Affairs, & Arctic John Etalook,
9 IBIA 126, 88 I.D. 1020 (1981)

State of Alaska v. 13.90 Acres of Land,
James Watt, et al., Civil No. F81-40,
D. Alaska. Suit pending.

State of Alaska v. Jacob Lestenkof, Area
Dir., BIA, & James Watt, et al., Civil
No. F81-49, D. Alaska. Suit pending.

State of Alaska, Andrew Kalerak, Jr., 73 I.D. 1 (1966)

Andrew J. Kalerak, Jr., et al. v. Stewart L.
Udall, Civil No. A-35-66, D. Alaska. Judgment
for plaintiff, Oct. 20, 1966; rev'd, 396 F.2d
746 (9th Cir. 1968); cert. denied, 393 U.S.
1118 (1969).

Appeal of the State of Alaska, 3 ANCAB 285 (1979),
Order dismissing appeal & dec. dated June 11, 1979

State of Alaska v. Cecil D. Andrus, Secre-
tary of the Interior, Guy R. Martin, Ass't
Secretary of the Interior, BLM, & Koniag, Inc.,
Civil No. A79-168-CIV, D. Alaska. Suit pending.

Appeals of the State of Alaska & Seldovia Native
Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977)

Theodore A. Richards & Judith Miller v. The
Secretary of the Interior & Seldovia Native
Ass'n, Inc., Civil No. A78-170-CIV, D.
Alaska. Suit pending.

George S. Rhyneer, Walter M. Johnson, David
Vanderbrink, Vivian MacInnes, Bruce McAllister
& Alan V. Hanson v. Cecil Andrus, Secretary of
the Interior, Seldovia Native Ass'n, Inc.,
Cook Inlet Region, Inc., Robert Leresche,
Comm'r of Natural Resources of the State of
Alaska, Civil No. A78-240 CIV, D. Alaska.
Suit pending.

Aleutian/Pribilof Islands Ass'n v. Acting Dep. Ass't
Secretary--Indian Affairs (Operations), 9 IBIA 254,
89 I.D. 196 (1982)

Aleutian/Pribilof Islands Ass'n v. Gene R.
Powers, Chief, Div. of Support Services,
Juneau Area Office, BIA, et al., Civil
No. A82-163 CIV, D. Alaska. Suit pending.

Suits for Judicial Review

Robert D. Alexander, Paul D. Kennett, 59 IBLA 118 (1981); William J. McGrath, 62 IBLA 110 (1982); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981); Dr. Jose Trabal, 60 IBLA 97 (1981); Ben M. Powell III, 59 IBLA 146 (1981)

Robert D. Alexander v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-0231.

Paul D. Kennett v. Dept. of the Interior et al., Civil No. 82-0250.

William J. McGrath v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-0774.

Ester J. Kobbeman, as Executrix for the Estate of Clyde K. Kobbeman v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-0495.

Dr. Jose Trabal v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-0450.

Benson M. Powell III v. Dept. of the Interior et al., Civil No. 82-0249.

For above cases:
Actions consolidated by order filed May 25, 1982.
Suits pending.

William T. Alexander, 21 IBLA 56 (1975). Petition for reconsideration denied by Order, Jan. 5, 1976, 28 IBLA 277 (1976) (Supp. I); 41 IBLA 1 (1979)

William T. Alexander v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. CIV 75-538, D.N.M. Remanded, Apr. 23, 1976.

William T. Alexander v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV-79-603-B, D.N.M. Judgment for defendant, July 7, 1980. No appeal.

E. H. Allen & Frank Melluzzo, A-30182 (July 9, 1964)

E. H. Allen & Frank Melluzzo v. Stewart L. Udall, Civil No. 1001, D. Ariz. Judgment for defendant, Apr. 27, 1967; no appeal.

William Allen, 17 IBLA 1 (1974)

William Allen v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-74-331, D. Utah. Rev'd & remanded, Apr. 20, 1976; no appeal.

Allied Contractors, Inc., 68 I.D. 145 (1961)

Allied Contractors, Inc. v. U.S., Ct. Cl. No. 163-63. Stipulation of settlement filed Mar. 3, 1967; compromised.

Altex Oil Corp., 61 IBLA 270 (1982)

Altex Oil Corp. v. James G. Watt et al., Civil No. C82-0424A, D. Utah. Suit pending.

American Coal Co., 8 IBMA 64, 84 I.D. 394 (1977)

American Coal Co. v. Dept. of the Interior, No. 77-1604, U.S. Ct. of Appeals, 10th Cir. Dismissed on motion of Petitioner, Nov. 23, 1977.

American Quasar Petroleum Co., 42 IBLA 243 (1979)

Arjay Oil Co. v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Dir., BLM, Robert O. Buffington, State Dir., BLM, Idaho Office, Civil No. C-80-0002-W, D. Utah. Suit pending.

American Telephone & Telegraph Co., 25 IBLA 341 (1976)

American Telephone & Telegraph Co. v. Dept. of the Interior, Rogers C. B. Morton, et al., Civil No. 5695, D. Wyo. Dismissed with prejudice, Dec. 26, 1973; order amending judgment filed Feb. 15, 1974.

Anadarko Production Co., 66 IBLA 174 (1982)

Anadarko Production Co. v. James Watt, Civil No. 82-1278, D.N.M. Suit pending.

Arjay Oil Co., 31 IBLA 260 (1977)

Arjay Oil Co. v. Cecil D. Andrus, Individ. & in his capacity as Secretary of the Interior, George L. Turcott, Individ. & in his capacity as Acting Dir., Bureau of Land Management, William C. Mathews, Individ. & in his capacity as Dir. of the Idaho State Office, J. W. & Carolyn Bloom & American Quasar Petroleum Co., Civil No. C-77-1167, D. Idaho. Dismissed without prejudice Jan. 19, 1978; dismissed for lack of prosecution, Dec. 22, 1978.

Armco Steel Corp., 8 IBMA 88, 84 I.D. 454 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1839, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Charles D. Ashley, 37 IBLA 367 (1978)

Eleanor P. Ashley as Personal Representative of the Estate of Charles D. Ashley v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-C-60, D. Wis. Rev'd, Mar. 27, 1980; appeal filed May 23, 1980; aff'd, July 27, 1981; no petition.

Associated Investors & Auburn Enterprises, Inc., IA-2252 (Dec. 10, 1971); reconsideration denied, Mar. 27, 1972; Admin. Appeal of Robert B. Wooding et al. v. Comm'r, Bureau of Indian Affairs, 4 IBIA 255 (1975); reconsideration denied, 5 IBIA 9 (1976); Robert B. Wooding v. Area Dir., Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (1982)

Robert B. Wooding, d/b/a Associated Investors & Auburn Enterprises, Inc. v. Rogers C. B. Morton, Civil No. 77-72C3, W.D. Wash. Remanded to the Secretary for reconsideration, Aug. 13, 1973.

Robert B. Wooding, d/b/a Associated Investors & Auburn Enterprises, Inc. v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C76-86T, W.D. Wash. Judgment for defendant, Nov. 4, 1976, appeal dismissed for failure to prosecute, June 3, 1977.

Suits for Judicial Review

The Atchison, Topeka & Santa Fe Railway Co. v. Emma Mae Cox; U.S. v. Emma Mae Cox & M. D. & Edith Rawls, 4 IBLA 279 (1972)

Edith Rawls, Individ. & as Adm'x of the Estate of M. D. Rawls, Deceased, & Emma Mae Cox, a Widow v. U.S., Rogers C. B. Morton, et al., Civil No. 73-19 PCT CAM, D. Ariz. Judgment for defendant, Apr. 22, 1975; reconsideration denied, Nov. 18, 1975; aff'd, 566 F.2d 1373 (9th Cir. 1978); no petition.

Virginia Gail Atchison et al., 13 IBLA 18 (1973); George Ondola, 17 IBLA 363 (1974); Petition for Reconsideration denied by Order, Mar. 17, 1975; Susie Ondola, 17 IBLA 359 (1974); Petition for Reconsideration denied by Order, Mar. 17, 1975.

George Ondola, Susie Ondola, Charlie John, & on behalf of all other Alaska Natives similarly situated v. James Hathaway et al., Civil No. A75-111, D. Alaska. Suit pending.

Atlantic Richfield Co., Marathon Oil Co., 16 IBLA 329, 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Vincent E. McKelvey, Dir. of Geological Survey, & C. J. Curtis, Area O&G Super., Geological Survey, Civil No. C74-181, D. Wyo.

For above cases:

Actions consolidated; judgment for Plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Estate of Albert Attocknie, IA-1442 (Feb. 7, 1966)

Willis Attocknie v. Stewart L. Udall, Civil No. 1646-66. Dismissed with prejudice, 261 F. Supp. 876 (1966); rev'd, 390 F.2d 686 (10th Cir. 1968); cert. denied, 393 U.S. 833 (1968).

Harold Babcock et al., A-30301 (June 16, 1965)

James Babcock et al. v. Stewart L. Udall, Civil No. 1-66-87, S.D. Idaho. Judgment for defendant, June 24, 1969; no appeal.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (1976); reconsideration denied, Aug. 12, 1976

J. C. Babcock & L. G. Shipp v. The Secretary of the Interior, Civil No. C-77-15, E.D. Wash. Judgment for defendant aff'd, Aug. 31, 1979.

Badger Coal Co., 2 IBSMA 117 (1980)

Badger Coal Co. v. Cecil D. Andrus, Civil No. 80-0333-E, N.D. W. Va. Suit pending.

Badger Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, 2 IBSMA 95 (1980)

Badger Coal Co. v. Cecil D. Andrus et al., Civil No. 80-0094-C, N.D. W. Va. Dismissed, Oct. 14, 1980.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

David C. Bagley et al. v. Stewart L. Udall et al., Civil No. 109-65, D. Utah. Judgment for plaintiff, June 13, 1966; decree of dist. ct. vacated, case remanded to be dismissed as moot, Jan. 20, 1967, 10th Cir.; dismissed, Apr. 24, 1967.

Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973)
See William D. Sexton et al.

R. C. Bailey et al., 7 IBLA 266 (1972); R. C. Bailey & C. Burglin, 10 IBLA 281 (1973)
See William D. Sexton et al.

Robert V. Bailey et al., 12 IBLA 253 (1973)

Max L. Krueger v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1256. Dismissed, Jan. 28, 1975; no appeal.

Leslie N. Baker et al., A-28454 (Oct. 26, 1960);
On Reconsideration Autrice C. Copeland, 69 I.D. 1 (1962)

Autrice Copeland Freeman v. Stewart L. Udall, Civil No. 1578, D. Ariz. Judgment for defendant, Sept. 3, 1963 (opinion); aff'd, 336 F.2d 706 (9th Cir. 1964); no petition.

Phil Baker v. The North American Coal Co., 8 IBMA 164, 84 I.D. 877 (1977)

Phil Baker v. Dept. of the Interior, No. 77-1973, U.S. Ct. of Appeals, D. C. Cir.; aff'd in part & rev'd in part, Nov. 29, 1978.

H. E. Baldwin & John R. Keeling, 3 IBLA 71 (1971)

H. E. Baldwin & John R. Keeling v. Rogers C. B. Morton et al., Civil No. 72-438 PHX CAM, D. Ariz. Dismissed, May 29, 1974; appeal dismissed, Jan. 16, 1976.

Ball Brothers Sheep Co. et al., 2 IBLA 166 (1971)

Ball Brothers Sheep Co. v. Rogers C. B. Morton, Civil No. 1-72-35, D. Idaho. Dismissed, Oct. 12, 1973; no appeal.

Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974)

Ballard E. Spencer Trust, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-060, D.N.M. Judgment for defendant, Aug. 19, 1975; aff'd, 544 F.2d 1067 (10th Cir. 1976).

Suits for Judicial Review

Estate of Myron Bangs, Jr., IA-1327 (Feb. 7, 1966)

Helen Pratt Matin et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6444, N.D. Okla. Sustained, June 2, 1967; dismissed, June 25, 1970.

Max Barash, The Texas Co., 63 I.D. 51 (1956)

Max Barash v. Douglas McKay, Civil No. 939-56. Judgment for defendant, June 13, 1957; rev'd & remanded, 256 F.2d 714 (1958); judgment for plaintiff, Dec. 18, 1958. Supp. dec., 66 I.D. 11 (1959); no petition.

Barnard-Curtiss Co., 64 I.D. 312 (1957); 65 I.D. 49 (1958)

Barnard-Curtiss Co. v. U.S., Ct. Cl. No. 491-59. Judgment for plaintiff, 301 F.2d 909 (1962).

Pearl C. Barnett, 52 IBLA 273 (1981)

Pearl C. Barnett v. James G. Watt, Secretary of the Interior, Bureau of Land Management, Civil No. 81-0322-S(I), S.D. Cal. Suit pending.

R. M. Barton, 4 IBLA 229 (1972); 5 IBLA 1 (1972); 7 IBLA 68 (1972)

R. M. Barton v. Rogers C. B. Morton et al., Civil No. 9322, D.N.M.

R. M. Barton v. Rogers C. B. Morton et al., Civil No. 9415, D.N.M.

R. M. Barton v. Rogers C. B. Morton et al., Civil No. 9692, D.N.M.

For above cases:
Dismissed with prejudice, Dec. 20, 1972; no appeal.

Bass Enterprises Production Co., 48 IBLA 11 (1980)

Bass Enterprises Production Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ 80-431 C, D.N.M. Judgment for defendant, June 29, 1982.

Eugenia Bate, 69 I.D. 230 (1962)

Katherine S. Foster & Brook H. Duncan II v. Stewart L. Udall, Civil No. 5258, D.N.M. Judgment for defendant, Jan. 8, 1964; rev'd, 335 F.2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (Jan. 31, 1963)

Battle Mountain Co. v. Stewart L. Udall, Civil No. 64-29, D. Or. Per curiam dec., 225 F. Supp. 382 (1966); rev'd, 385 F.2d 90 (9th Cir. 1967); cert. denied, 390 U.S. 957 (1968).

Bay Construction Co. et al., IBCA-77 (Nov. 30, 1960)

Bay Construction Co. et al. v. U.S., Ct. Cl. No. 302-60. Dismissed with prejudice.

Robert L. Beery et al., 25 IBLA 287, 83 I.D. 249 (1976)

J. A. Steele et al. v. Thomas S. Kleppe, in his capacity as Secretary of the Interior, & U.S., Civil No. C76-1840, N.D. Cal. Aff'd, June 27, 1978; no appeal.

Robert E. Belknap et al., 55 IBLA 200 (1981)

Robert E. Belknap III & Thomas H. Belknap, as Trustees, & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C81-0267, D. Wyo. Suit pending.

Geosearch, Inc. & Larry R. Glasnapp v. James G. Watt et al., Civil No. C81-0266, D. Wyo. Suit pending.

Jack J. Bender, 54 IBLA 375, 88 I.D. 550 (1981)

Jack J. Bender v. James G. Watt, Secretary of the Interior, et al., Civil No. CIV 81-0682JB, D.N.M. Suit pending.

Admin. Appeal of Benson-Montin-Greer Drilling Corp. v. Acting Area Dir., Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (1978)

Benson-Montin-Greer Drilling Corp. v. Cecil Andrus, Individ. & as Secretary of the Interior, The Board of Indian Appeals & the Acting Area Dir. of the Bureau of Indian Affairs, Albuquerque Area Office, Civil No. CIV 78-468-B, D.N.M. Dismiss without prejudice, June 30, 1981; no appeal.

Estate of Julius Benter, 1 IBIA 24 (1970); (Supp.), 1 IBIA 59 (1971)

George B. Brazie, Individ. & as the Executor of the Last Will & Testament of Julius Benter, Deceased v. Rogers C. B. Morton, Civil No. S-2360, E.D. Cal. Stipulated dismissal with prejudice.

Sam Bergesen, 62 I.D. 295 (1955); reconsideration denied, IBCA-11 (Dec. 19, 1955)

Sam Bergesen v. U.S., Civil No. 2044, D. Wash. Complaint dismissed Mar. 11, 1958; no appeal.

Diane M. Berndt et al., 62 IBLA 288 (1982)

Richard W. Méyers & Diane M. Berndt v. James Watt, Secretary of the Interior, et al., Civil No. C82-0167, D. Wyo. Suit pending.

Big Delta Minerals, Inc. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (OSM) (Respondent), 2 IBSMA 32 (1980)

Big Delta Minerals, Inc. v. Cecil D. Andrus, Civil No. C-80-0041-0, W.D. Ky. Suit pending.

Suits for Judicial Review

Estate of William Bigheart, Jr., IA-T-21 (Aug. 8, 1969), IA-T-21 (Supp.) (Sept. 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency, et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed Dec. 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, Aug. 23, 1972; aff'd, 482 F.2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Co., 5 IBMA 231, 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr., & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, Oct. 27, 1977; no appeal.

Black Fox Mining & Development Corp., 2 IBSMA 110, 87 I.D. 207 (1980)

Black Fox Mining & Development Corp. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-913 K, W.D. Pa. Judgment for plaintiff, Jan. 21, 1981; no appeal.

Blackhawk Mining Co., Inc. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (OSM) (Respondent), 1 IBSMA 215 (1979)

Blackhawk Mining Co. v. Cecil D. Andrus, Civil No. 79-136, E.D. Ky. Judgment for defendant, Feb. 11, 1982.

Blackwood Fuel Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, Humphreys Enterprises (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 2 IBSMA 233 (1980)

Blackwood Fuel Co. et al. v. Cecil D. Andrus et al., Civil No. 80-0289-B, D. Va. Suit pending.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (Aug. 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, Nov. 23, 1960 (opinion); aff'd, 303 F.2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd, 373 U.S. 472 (1963).

Leroy G. Boudreaux, 62 IBLA 255 (1982)

Leroy J. Boudreaux v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-1328. Suit pending.

William B. Brice, 53 IBLA 174 (1981)

William B. Brice v. James G. Watt, Secretary of the Interior, & Maxwell T. Lieurance, Wyo. State Dir., BLM, Civil No. C81-0155, D. Wyo. Suit pending.

Irving B. Brick, 36 IBLA 235 (1978); vacated by Order Sept. 26, 1980.

Irving B. Brick v. Cecil D. Andrus, Civil No. 78-1814. Judgment for defendant, June 8, 1979; rev'd & remanded to Secretary with instructions, 628 F.2d 213 (1980).

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, Oct. 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975); On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil D. Andrus, Secretary of the Interior, Curt Berklund, Dir., Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Remanded to the Dept., June 29, 1979; no appeal.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, Sept. 17, 1963; rev'd, 335 F.2d 706 (1964); no petition.

Tom Brown, 37 IBLA 381 (1978)

Tom Brown v. Dept. of the Interior, Civil No. 80-3046, W.D. Ark. Dismissed with prejudice, Sept. 17, 1981; appeal filed Oct. 7, 1981.

Tom Brown v. Dept. of the Interior, Civil No. 81-3003, W.D. Ark.

Suits for Judicial Review

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C.D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd, 449 F.2d 600 (9th Cir. 1971); judgment for defendant, Mar. 10, 1972.

Buell Brothers, A-30679 (Mar. 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, Oct. 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alaska. Dismissed, Aug. 13, 1976.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272, 86 I.D. 133 (1979)

Holland Livestock Ranch, a Co-Partnership composed of Bright-Holland Co., Marimont-Holland Co. & Nemmeroff-Holland Co. & John J. Casey v. U.S., Cecil Andrus, Secretary of the Interior, Edward Roland, Cal. State Dir., BLM, & Edward Hastey, Nev. State Dir., BLM, et al., Civil No. R-79-78-HEC, D. Nev. Judgment for defendant, Aug. 7, 1979; aff'd, 655 F.2d 1002 (9th Cir. 1981).

Bureau of Land Management (Appellant), Diamond Ring Ranch (Appellee) & Bureau of Sport Fisheries & Wildlife (Amicus Curiae), 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, Dec. 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, & Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe, et al., Civil No. A75-232 CIV, D. Alaska. Consolidated with C. Burglin et al. v. Thomas Kleppe, Civil No. A75-113.

Burn Construction Co., Inc., IBCA 1042-9-74, 85 I.D. 353 (1978)

Burn Construction Co., Inc. v. U.S., Ct. Cl. No. 474-79C. Judgment for defendant, Dec. 30, 1981.

David Burr et al., 56 IBLA 225 (1981)

David L. Burr & Fred L. Engle, d/b Resource Service Co. v. James Watt et al., Civil No. C81-0308, D. Wyo. Suit pending.

Geosearch, Inc. & Edward F. Kaliciak v. James Watt et al., Civil No. C81-0305, D. Wyo. Suit pending.

Burton/Hawks, Inc., 47 IBLA 125 (1980); aff'd by Order dated Oct. 1, 1981; Energy Trading, Inc., 50 IBLA 9 (1980); 55 IBLA 167 (1981)

Burton/Hawks, Inc. & Energy Trading, Inc. v. James G. Watt, Civil No. C-81-0961J, D. Utah. Suit pending.

Bushman Construction Co., IBCA-103 (Mar. 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Admin. Appeal of Norman R. Byrd v. Comm'r, Bureau of Indian Affairs, 7 IBIA 142 (1979)

Norman R. Byrd v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Assocs., a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Or. Dismissed, Oct. 24, 1978. No appeal.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc., & California Off-Road Vehicle Ass'n, Inc. v. Cecil Andrus, Secretary of the Interior & James B. Ruche, State Dir., Cal. State Office of BLM, Civil No. 79-1797-N, S.D. Cal. Judgment for defendant Aug. 5, 1980; aff'd, Jan. 22, 1982.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

State of California et al. v. Doria Mining & Engineering Corp. et al., U.S. (Intervenor), 17 IBLA 390 (1974)

Doria Mining & Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); vacated & remanded, Nov. 2, 1979.

Suits for Judicial Review

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Cecil D. Andrus et al., Civil No. C-79-0477, D. Utah; rev'd, Dec. 30, 1980.

Western Slope Carbon, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Marla B. Bohl, Chief, Land & Mining, BLM, Wyo. State Office, Civil No. C79-160, D. Wyo. Rev'd, June 9, 1980; aff'd, Jan. 8, 1982. No petition.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968; appealed by Secretary, July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Stewart L. Udall et al., Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Jack D. Canon et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon et al., 1 Sec. 1, 84 I.D. 176 (1977)

Mark B. Ringstad, William I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 6 IBMA 276, 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, U.S. Ct. of Appeals, 3d Cir.; aff'd per curiam, June 15, 1977.

Capital Fuels, Inc., 2 IBMA 261, 87 I.D. 430 (1980)

Capital Fuels, Inc. v. Cecil D. Andrus, Secretary of the Interior, Walter N. Heine, Dir. Office of Surface Mining Reclamation & Enforcement, Civil No. 80-2438, S.D. W. Va. Suit pending.

Carbon Fuel Co., 6 IBMA 20, 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, 581 F.2d 891 (1978); cert. denied, Oct. 30, 1978.

Jack E. Carl, A-27870; A-27900 (Apr. 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton et al.

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate) et al. v. Udall, Civil No. 67-323, W.D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd & remanded to dismiss for want of jurisdiction, 407 F.2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd, 397 U.S. 598 (1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary of the Interior & Paul Howard, State Dir., Bureau of Land Management, Civil No. C-78-0111, D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, C. J. Curtis, Area O&G Super., Geological Survey & Glenna M. Lane, Chief, O&G Sec., Land Office, BLM, Civil No. C79-077, D. Wyo. Judgment for defendant, Jan. 31, 1980; no appeal.

Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964); Shell Oil Co., A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Dec. against Dept. by the lower court; aff'd, 423 P.2d 104 (1967); rev'd, 432 P.2d 435 (1967).

Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979)

Helen Edmo Sherman, Mary New Robe Redhead, Roy (Archie, Jr.) St. Goddard, Vincent Spotted Bear, Jack Edmo v. Cecil D. Andrus, Secretary of the Interior, Jeanette Rattler Choate Marceau, Civil No. CV-79-73-GF, D. Mont. Suit pending.

Suits for Judicial Review

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, Wyo. State Dir., Bureau of Land Management, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F.2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Div. of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, Feb. 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Citizens Committee to Save Our Public Lands et al. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C77-0633, N.D. Cal. Judgment for defendant, May 19, 1977.

City of Homer, 6 ANCAB 203, 88 I.D. 1047 (1981)

City of Homer v. Curtis McVee, State Dir. of the Bureau of Land Management, et al., Civil No. A82-043 CIV, D. Alaska. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdiv. of the State of Nevada v. Thomas Kleppe, Secretary of the Interior, & his successors in office, & E. I. Rowland, Dir., Bureau of Land Management, for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Donald L. Clark, 71 IBLA 169 (1983)

Donald L. Clark v. James G. Watt, Civil No. 83-1125, D. Idaho. Suit pending.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with the Trial Commr's report issued Apr. 13, 1971. P.L. 92-108, 85 Stat. 331, Aug. 11, 1971, enacted accepting the Chief Commr's report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (1978)

Richard Wagner et al. v. U.S. et al., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (Dec. 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; rev'd & remanded with direction to enter judgments for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., IBCA-1004-9-73, 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. & Osro Cobb v. U.S., Civil No. 967, W.D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, Jan. 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah & Abram Cohen v. U.S., Civil No. 3158, D.R.I. Compromised.

Colorado-Ute Electric Ass'n, 46 IBLA 35 (1980)

Colorado-Ute Electric Ass'n v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Charles W. Luscher, Acting State Dir., Colorado State Office, BLM, Civil No. 80-C-500, D. Colo. Suit pending.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam dec., aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Suits for Judicial Review

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, In the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, IA-1972-X-9, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co. et al., A-30760 (Sept. 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Consolidation Coal Co., 1 IBSMA 273, 86 I.D. 523 (1979); 2 IBSMA 21, 87 I.D. 59 (1980)

Consolidation Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-3037, S.D. Ill. Judgment for defendant, Feb. 8, 1982.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall et al., Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals, & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Joe Conway, 59 IBLA 314 (1981)

Joe Conway v. James Watt et al., Civil No. C82-0029, D. Wyo. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42, 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

David E. Cooley, Jr., 62 IBLA 87 (1982)

David E. Cooley, Jr. v. James G. Watt, Secretary of the Interior, et al., Civil No. C82-0188, D. Wyo. Suit pending.

Gordon L. Cooper, 51 IBLA 191 (1980)

Gordon L. Cooper v. Cecil D. Andrus et al., Civil No. 81-151-EDP, E.D. Cal. Suit pending.

Autrice C. Copeland, 69 I.D. 1 (1962)

See Leslie N. Baker et al.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1572. Judgment for defendant, June 29, 1979; appeal filed Aug. 28, 1979.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhooff, 10 IBLA 363, 80 I.D. 301 (1973)

Edward D. Neuhooff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

William D. Cornia et al., Wyoming 4-63-1, etc.; Utah 1-63-1, etc. (Aug. 25, 1965)

William D. Cornia et al. v. Stewart L. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp. et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Hon. Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Dir. for the Bureau of Indian Affairs, Anadarko Agency, & Samedan Oil Corp., Civil No. CIV 77-0415T D. Okla. Aff'd, Jan. 19, 1979; no appeal.

Suits for Judicial Review

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation & Enforcement, 3 IBSMA 44, 88 I.D. 394 (1981)

Council of the Southern Mountains, Inc. v. James G. Watt, Civil No. 81-1022. Suit pending.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Glenn Coy, Resource Service Co., 52 IBLA 182, 88 I.D. 236 (1981)

Mildred D. Coy et al. v. James G. Watt, Secretary of the Interior, et al., Civil No. 81-0984. Suit pending.

Philip Cramer, 57 IBLA 386 (1981)

Philip Cramer v. James Watt, Secretary of the Interior, Civil No. CIV 81-1356, D. Idaho. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 2 IBIA 289, 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, Individ. & in his official capacity as Secretary of the Interior, & his successors in office et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further admin. action, Dec. 16, 1975.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Elizabeth Barndt Crouse et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S. & Rogers C. B. Morton, Civil No. F-27-71 Civ., D. Alaska. Dismissed, July 13, 1972; no appeal.

Estate of William Mason Cultee, 9 IBIA 43 (1981)

Susan Lee, Deborah, Karen Beatty, & Brenda Lee Cultee v. James G. Watt, Secretary of Interior, Interior Board of Indian Appeals, & Helene Jake, Civil No. C811164, W.D. Wash. Suit pending.

Bill Cunningham, Representative of Bob Marshall Alliance, Montana Wilderness Ass'n & The Wilderness Society (Protestant), Paul C. & Ann E. Kohlman (Lease Offerors), G. H. Tanner (Lease Offeror). Protest dismissed, dated Jan. 11, 1982, approved by the Ass't Secretary, Jan. 15, 1982.

Bob Marshall Alliance et al. v. James G. Watt, Civil No. 82-15 GF, D. Mont. Suit pending.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (1981)

Vincent M. D'Amico et al. v. James Watt et al., Civil No. 81-2050. Suit pending.

Daniel Brothers Coal Co., 2 IBSMA 45, 87 I.D. 138 (1980)

Larry Daniel et al. v. Cecil D. Andrus et al., Civil No. 80-49, E.D. Ky. Suit pending.

Estate of George Daniels, IA-1295 (Nov. 2, 1965)

Elizabeth Daniels et al. v. Johnson, Supt., Osage Indian Agency, & Udall, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

David Excavating Co., Inc. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 3 IBSMA 163 (1981); 3 IBSMA 215 (1981)

David Excavating Co. v. James Watt, Secretary of the Interior, Civil No. EV-81-171-C, S.D. Ind. Suit pending.

David Excavating Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 4 IBSMA 2 (1982)

David Excavating Co. v. Secretary of the Interior, Civil No. EV-82-40-C, S.D. Ind. Suit pending.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. Cecil Andrus, Secretary of the Interior, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Oma Belle Day et al., AA-5702 (Dec. 30, 1969)

Oma Belle Day v. Walter J. Hickel et al., Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

Dean Trucking Co., Inc., 1 IBSMA 229, 86 I.D. 437 (1979)

Dean Trucking Co., Inc. v. Cecil D. Andrus, Civil No. 80-0006-B, W.D. Va. Suit pending.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

Wayne E. DeBord et al., 50 IBLA 216 (1980)

Paul H. Landis et al. v. Cecil Andrus, Secretary of the Interior, & his officers, employees & agents, to-wit et al., Civil No. 80-2110, D. Idaho. Suit pending.

Suits for Judicial Review

H. R. Delasco, 39 IBLA 194, 84 I.D. 192 (1979);
Blanche V. White, 40 IBLA 152, 85 I.D. 408 (1979)

Stewart Capital Corp. et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C79-123, D. Wyo. Aff'd in part, rev'd in part, Apr. 24, 1980; appeal withdrawn.

Wilbur G. Desens et al., 54 IBLA 271 (1981)

Wilbur G. Desens & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. C81-0213, D. Wyo. Suit pending.

Geosearch, Inc. v. James G. Watt, Secretary of the Interior, et al., Civil No. C81-0214, D. Wyo. Suit pending.

Richard J. DiMarco, 53 IBLA 130 (1981)

Richard J. DiMarco v. James G. Watt, Secretary of the Interior, et al., Civil No. 81-2243. Suit pending.

Dinco Coal Sales, Inc., 4 IBSMA 35, 89 I.D. 113 (1982)

Mary DeBord et al. v. James G. Watt, Secretary of the Interior, & Dinco Coal Sales, Inc., Civil No. 82-99, D. Ky. Suit pending.

Carol Dolezal, 56 IBLA 52 (1981)

Henry A. Alker v. James Watt & Carol Dolezal, Civil No. 81-0847, D.N.M. Suit pending.

Downtown Properties, Inc. v. Area Dir., Sacramento Area Office, Bureau of Indian Affairs, 8 IBIA 248 (1981)

Downtown Properties, Inc. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-1724-N(M), S.D. Cal. Suit pending.

Downtown Properties, Inc. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 81-0835-N(H), S.D. Cal. Suit pending.

The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Drummond Coal Co., 2 IBSMA 96, 87 I.D. 196 (1980)

Drummond Coal Co. v. Cecil D. Andrus et al., Civil No. C-V-80-M-0829, N.D. Ala. Judgment for plaintiff, Apr. 20, 1981.

Lawrence E. Dye, 57 IBLA 360 (1981)

Lawrence E. & Claire E. Dye v. James G. Watt et al., Civil CIV-81-982-HB, D.N.M. Suit pending.

Alfred L. Easterday, 34 IBLA 195 (1978); Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee) 36 IBLA 181 (1978); 50 IBLA 306 (1980)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo.

For above cases:

Actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, BLM, Civil No. C80-0372, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 4 IBMA 1, 82 I.D. 22 (1975)

Internat'l Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, U.S. Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 4 IBMA 298, 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, U.S. Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975); On Reconsideration, 83 I.D. 425 (1976); aff'd en banc, 83 I.D. 695 (1976); 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, U.S. Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Eastover Mining Co., 2 IBSMA 5, 87 I.D. 9 (1980)

Eastover Mining Co. v. Cecil D. Andrus et al., Civil No. 80-17, E.D. Ky. Suit pending.

Lawrence Edwards, A-30696, A-30705 (Apr. 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Suits for Judicial Review

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Dir., Bureau of Land Management, & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Martha E. Ehbrecht, 62 IBLA 382 (1982)

Martha E. Ehbrecht v. Dept. of the Interior et al., Civil No. 82-1329. Suit pending.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (1978)

Riter & Kerry Ekker v. Cecil Andrus & BLM, Civil No. C-80-180A, Utah. Suit pending.

Appeal of Eklutna, Inc., 1 ANCAB 165, 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board et al., Civil No. A76-236, D. Alaska. Suit pending.

Elkay Mining Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 2 IBSMA 19 (1980)

Elkay Mining Co. v. Cecil D. Andrus et al., Civil No. 80-2030, S.D. W. Va. Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, Individ. & on behalf of all others similarly situated v. Thomas Kleppe, Individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of admin. remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979)

H. J. Enevoldsen v. Cecil D. Andrus, Secretary of the Interior, Glenna M. Lane, Chief, O&G Sec., Wyo. State Office, BLM, & Shackelford Reeder, Civil No. C80-0047, D. Wyo. Suit pending.

Henry J. Ernst, A-27196 (Nov. 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (Apr. 10, 1970); 1 IBLA 269, 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

John J. Farrelly et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Ralph G. Faulkner et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred, & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Federal Energy Corp., 51 IBLA 144 (1980)

Federal Energy Corp. v. U.S. Dept. of the Interior, Civil No. 81-0433. Voluntary dismissal, Apr. 27, 1981.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39, 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222, 86 I.D. 234 (1979)

Benson J. Lamp v. Cecil Andrus, Secretary of the Interior, James L. Burski, Douglas E. Henriques, & Edward W. Stuebing, Admin. Judges, IBLA, Civil No. 79-1804. Dismissed as to defendant Feinberg, Mar. 17, 1981.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Admin. Appeal of Hannah Finnesand, A Native Alaska Indian v. Comm'r of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand & Flora Rondeau for themselves & all others similarly situated, & Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves & all others similarly situated v. Rogers C. B. Morton et al., Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Suits for Judicial Review

Thomas R. Flickinger, 40 IBLA 53 (1979);
Pamela W. Kay, 40 IBLA 240 (1979);
Robert B. Coen, 41 IBLA 55 (1979)

Robert J. Ahrens, Harry Alatchanian, Jon Arney, Peter R. Brant, Helen D. Coen, Robert B. Coen, & Jack P. Corsi, et al. v. Cecil Andrus, Secretary of the Interior, Civil No. C79-166, D. Wyo. Judgment for plaintiff.

Joel Held v. Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Civil No. CA-80-0133-G, N.D. Tex. Suit pending.

Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Dir., Geological Survey, & Murray T. Smith, Individ. & as Area Mining Super., Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Foote Mineral Co. v. U.S., Ct. Cl. No. 12-78. Suit pending.

Carl E. Forsberg et al., A-29158 et al. (Aug. 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Admin. Appeal of Fort Berthold Land & Livestock Ass'n v. Area Dir., Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90, 87 I.D. 201 (1980)

Edward S. Danks, John Fredericks, Maurice Danks, et al. v. Harrison Fields, Acting Supt. of Fort Berthold Indian Reservation, et al., Civil No. A4-80-39, D.N.D. Suit pending.

Robert K. Foster et al., A-29857 (June 15, 1964)

Robert K. Foster et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the Estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co. et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19 (1979)

Fuel Resources Development Co. v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Dir. of the Colo. State Office, BLM, et al., Civil No. 79-1639, D. Colo. Suit pending.

Harold W. Fullerton, 46 IBLA 116 (1980)

Harold W. Fullerton v. Cecil Andrus, Secretary of the Interior, Civil No. 80-22-M, D. Mont. Judgment for defendant, Mar. 23, 1981.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall et al., Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (Oct. 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

John Gahr, 65 IBLA 268 (1982)

John Gahr v. James Watt, John T. Tarr & Maxwell T. Lieurance, State Dir., Wyoming, BLM, Civil No. C82-0410. Suit pending.

D. R. Gallagher, 54 IBLA 72 (1981)

D. R. Gallagher v. U.S., James G. Watt, Secretary of the Interior, Robert Burford, Dir., BLM, Civil No. C81-505J, D. Utah. Suit pending.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113, 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Suits for Judicial Review

Estate of Gei-kaun-mah (Bert), 4 IBLA 129, 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, Individ. & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Estate of Walter George & Minnie Racehorse George Snipe, 9 IBLA 20 (1980)

Charlotte & Charlene Hughes v. James G. Watt, Civil No. 81-671-HB, D.N.M. Suit pending.

Geosearch, Inc., IBLA 80-128. Appeal dismissed by Order dated Jan. 2, 1980.

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C80-0084, D. Wyo. Judgment for defendant, Oct. 15, 1980.

Geosearch, Inc., 40 IBLA 267 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-79-0593, D. Utah. Judgment for defendant, Aug. 22, 1980; no appeal.

Geosearch, Inc., 40 IBLA 401 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-79-350, D. Wyo. Dismissed for want of jurisdiction, 494 F. Supp. 978 (1980); no appeal.

Geosearch, Inc., 41 IBLA 291 (1979); James Koch et al., 61 IBLA 235 (1982)

Geosearch, Inc., & Carrie Garner v. Getty Oil Co. et al., Civil No. 82-1109. Suit pending.

James Koch & Resource Service Co. v. James G. Watt et al., Civil No. 82-1189. Suit pending.

Geosearch, Inc., 47 IBLA 39 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, Maxwell T. Lieurance, State Dir., BLM, Glenna M. Lane, Chief, O&G Sec., Wyo. State Office, BLM, Warren R. Haas, Fed. Energy Corp., & Banner Oil & Gas Ltd., Civil No. C80-0205, D. Wyo. Dismissed, 508 F. Supp. 839 (1981).

Geosearch, Inc., 48 IBLA 51 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, Maxwell T. Lieurance, State Dir., Wyo. State Office, et al., Civil No. C-80-0258. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 76 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-80-0259, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 333 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-80-0292, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 49 IBLA 19 (1980)

Geosearch, Inc. v. Cecil D. Andrus et al., Civil No. C-80-0300, D. Wyo. Judgment for defendant, 517 F. Supp. 1245 (1981)

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (Apr. 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

John Gonzales, A-30604 (Sept. 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

Charles Goodrich, 60 IBLA 25 (1981)

Charles Goodrich v. James Watt, Civil No. 82-0405. Suit pending.

Suits for Judicial Review

Jack Goodwin, 68 IBLA 400 (1982)

Jack Goodwin v. James Watt et al., Civil No. A1-83-17, D.N.D. Suit pending.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); appeal dismissed, Mar. 9, 1976.

Ray Granat et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Dept. of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974); 24 IBLA 49 (1976)

Grindstone Butte Project et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Dir. of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; rev'd, 638 F.2d 100 (9th Cir. 1981).

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, Deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by & through their next friend & Guardian Ad Litem, Dale Running Bear v. Rogers Morton, Individ. & as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Celeste C. Grynberg, Dean G. Smernoff, 44 IBLA 197 (1979)

Celeste C. Grynberg & Dean G. Smernoff as Co-Trustees for the Stephen Mark Grynberg Trust v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Colo. State Dir., BLM, IBLA, Joseph W. Goss & Joan B. Thompson, Judges thereof, Civil No. 79-1771, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Sec. F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Dept. of the Interior, Civil No. 77-0869. Aff'd, Oct. 11, 1977.

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (1981)

Ronald M. & Marion G. Guntert v. James G. Watt, Secretary of the Interior, et al., Civil No. CIVS-82-508-PCW, E.D. Cal. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955); IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted & case closed Oct. 10, 1958.

Ottlin D. Haas, 61 IBLA 338 (1982)

Ottlin D. Haas v. Dept. of the Interior et al., Civil No. 82-1327. Suit pending.

Walter S. Haas, Jr., 55 IBLA 283 (1981)

Walter S. Haas, Jr. v. James Watt et al., Civil No. 81-816, D. Or. Suit pending.

L. H. Hagood et al., 65 I.D. 405 (1958)

Edwin Still et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

Estate of Charles Hall, Sr., 8 IBIA 53 (1980)

Charles Hall, Jr. & Ruby Martin Archdale v. Cecil Andrus, Individ. & as Secretary of the Interior, Civil No. CV-80-67-GF, D. Mont. Suit pending.

Suits for Judicial Review

William Hall et al., A-30849; A-30852; A-30857
(Sept. 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Albert Hanan et al.; J. A. Jack & Sons, Inc.; & Hemphill Brothers, Inc., 6 ANCAB 111 (1981)

Sealaska Corp. v. Secretary of the Interior et al., Civil No. A81-513 CIV, D. Alaska. Suit pending.

Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (Mar. 5, 1965)

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 15, 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Royal Harris, 45 IBLA 87 (1980)

Royal Harris, James Friedman & Stu Mach v. U.S., Cecil Andrus, Secretary of the Interior, George Gustafson, Townsite Trustee for the State of Alaska, Civil No. A80-174-Civ., D. Alaska. Suit pending.

Virgil T. Hartquist, 51 IBLA 356 (1980)

Virgil T. Hartquist v. James G. Watt, Secretary of the Interior, Civil No. 81-319, D. Colo. Suit pending.

Paul Harvey et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest & Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D.N.M. Judgment for defendant, Jan. 25, 1967; aff'd, 384 F.2d 883 (10th Cir. 1967); no petition.

Hat Ranch, Inc., 27 IBLA 340, 83 I.D. 542 (1976)

Hat Ranch, Inc. v. Thomas Kleppe et al., Civil No. 76-668M, D.N.M. Remanded to the Interior Board of Land Appeals, June 2, 1978; appeal dismissed for lack of jurisdiction, Oct. 18, 1978.

Billy K. Hatfield et al. v. Southern Ohio Coal Co., 4 IBMA 259, 82 I.D. 289 (1975)

Dist. 6 United Mine Workers of America et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Ct. of Appeals, D.C. Cir. Board's dec. aff'd, 562 F.2d 1260 (1977).

Havlah Group, 60 IBLA 349 (1981)

Havlah Group, a Partnership & Gerald P. Kooyers v. Watt, Civil No. CIV-82-1018, D. Idaho. Suit pending.

Headwaters Ass'n (Protestant-Appellant), Cabax Mills et al. (Intervenors), IBLA 76-68, remanded to Bureau of Land Management by Order, Oct. 21, 1975; 33 IBLA 91 (1977); Appeal of Harold P. Canady et al., 29 IBLA 69 (1977); Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (1976)

Arthur Downing, Alan Winter, Alan Troxler & Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Or. Stipulated dismissal, Dec. 30, 1976.

Hercules (A Partnership) & Gemini (A Partnership), 67 IBLA 151 (1982)

Eileen Grooms v. James Watt & Hercules (A Partnership), Civil No. 82-2179, D. Colo. Suit pending.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Dir. (Idaho), BLM, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 3 IBMA 237, 81 I.D. 423 (1974)

Jesse Higgins et al. v. Cecil D. Andrus, No. 77-1363, U.S. Ct. of Appeals, D.C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Judgment for plaintiff, Apr. 4, 1978.

Suits for Judicial Review

Neil Hirsch, 70 IBLA 307 (1983)

Neil Hirsch v. James Watt et al., Civil No. 83-0097A, D. Utah. Suit pending.

The Hoke Co., 3 IBSMA 7 (1981)

The Hoke Co. v. U.S. & James Watt, Secretary of the Interior, Civil No. 81-0050-0(G), W.D. Ky. Suit pending.

Holland Livestock Ranch & John J. Casey, 52 IBLA 326, 88 I.D. 275 (1981)

Holland Livestock Ranch et al. v. U.S., James Watt, Secretary of the Interior, et al., Civil No. CIV-R-81-68-BRT, D. Nev. Suit pending.

Kenneth Holt, an Individ., etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Home Petroleum Corp et al., 54 IBLA 194, 88 I.D. 479 (1981)

Anthony C. Pagedas, Calvin J. Gillespie, Peter G. Sarantos, Thomas C. Pagedas, Donald J. Albrecht, & Fred L. Engle, dba Resource Service Center v. James G. Watt, Secretary of the Interior, Glenna M. Lane, Chief, O&G Sec., Wyo. State Office, BLM, Civil No. C81-206, D. Wyo. Suit pending.

Geosearch, Inc. & M. T. McGregor v. James G. Watt et al., Civil No. C81-0208, D. Wyo. Suit pending.

Hoover & Bracken Energies, Inc., 52 IBLA 27, 88 I.D. 7 (1981)

Hoover & Bracken Energies, Inc. v. DOI, James Watt, Secretary, Doyle G. Frederich, Acting Dir. U.S. Geological Survey & Theodore Krenzke, Dep. Comm'r, BIA, Civil No. CIV-81-461T, W.D. Okla. Judgment for plaintiff, Nov. 18, 1981.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (1978)

Charles House & Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CV-R-80-148-BRT, D. Nev. Suit pending.

U.S. v. Charles House, Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased, Fargo Pacific Rock & Sand, Inc., & Thiriot Sand & Gravel, Civil No. CIV-LV-81-89, RDF, D. Nev.

For above cases:
Actions consolidated. Suit pending.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alaska. Dismissed with prejudice, Oct. 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Dismissed with prejudice, Mar. 6, 1979; aff'd, Feb. 10, 1981, petition for cert. filed.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565 (Order of Dismissal dated Feb. 22, 1973); reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, Dec. 17, 1974; aff'd, 529 F.2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, Mar. 31, 1976; rev'd & remanded with directions, 570 F.2d 906 (10th Cir. 1978); cert. denied, Oct. 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, Nov. 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd & remanded for further admin. proceedings, 406 F. Supp. 214 (1976); appeal filed Jan. 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd, Nov. 7, 1977; no petition.

Idaho Desert Land Entries--Indian Hill Group, 72 I.D. 156 (1965); U.S. v. Ollie Mae Shearman et al.--Idaho Desert Land Entries--Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed et al. v. Dept. of the Interior et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, Sept. 3, 1965; dismissed, Nov. 10, 1965; amended complaint filed, Sept. 11, 1967.

U.S. v. Raymond T. Michener et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp. et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd, 480 F.2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, Aug. 30, 1976.

Inexco Oil Co. et al., 54 IBLA 260 (1981)

Janet E. MacCracken & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. C81-0212, D. Wyo. Suit pending.

Geosearch, Inc. v. James Watt, Secretary of the Interior, et al., Civil No. C81-0215, D. Wyo. Suit pending.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Dec. 30, 1969); 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of Sec. 603 of the Federal Land Policy & Management Act of 1976--Bureau of Land Management (BLM) Wilderness Study, M-36910, 86 I.D. 89 (1979)

Rocky Mountain Oil & Gas Ass'n v. Cecil D. Andrus, Secretary of the Interior & Leo Krulitz, Solicitor of the Interior, Civil No. C78-265, D. Wyo. Judgment for plaintiff, Nov. 17, 1980; appeal filed, Jan. 5, 1981.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, Mar. 27, 1968.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979)

Teresa Ramirez, Executor of Estate of Lola Ramirez v. Secretary of the Interior, Civil No. 79-L-293, D. Neb. Suit pending.

Island Creek Coal Co., 1 IBSMA 316, 86 I.D. 724 (1979)

Island Creek Coal Co., Rebel Coal Co. v. Cecil D. Andrus et al., Civil No. 80-3137, S.W. Va. Suit pending.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior, & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, Sept. 10, 1976.

J. A. Jones Construction Co. et al., IBCA-233 (June 17, 1960)

Palisades Contractors et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F.2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen et al., IBCA-363 (Mar. 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, Feb. 24, 1964; no appeal.

Raymond N. Joeckel, 68 IBLA 195 (1982)

Raymond N. Joeckel v. James G. Watt, Civil No. 83-CO171, D. Colo. Suit pending.

Suits for Judicial Review

John Walters Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, (Respondent), 3 IBSMA 238; 258; 259 (1981)

John Walters Coal Co. v. James Watt et al., Civil No. 81-129, E.D. Ky. Suit pending.

Calvin C. Johnson, 35 IBLA 306 (1978)

Calvin C. Johnson v. Cecil Andrus, Secretary of the Interior, Paul Howard, Utah State Dir., BLM, Morgan S. Jensen, Dist. Manager Kanab Dist., Larry Sip, Area Manager, Vermilion Resource Area, Civil No. C-78-0377, D. Utah. Dismissed with prejudice, Mar. 3, 1981.

Dale Johnson, A-30806 (Sept. 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alaska. Stipulated dismissal, Apr. 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971);

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, Oct. 18, 1977; aff'd, Sept. 18, 1980. No petition.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S. et al., Civil No. 76-0552. Dismissed as to defendants U.S., Dept. of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

J. T. & W. Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 3 IBSMA 283 (1981)

J. T. & W. Coal Co. v. James G. Watt, Secretary of the Interior, Civil No. 81-195, E.D. Ky. Suit pending.

June Oil & Gas, Inc., Cook Oil & Gas, Inc., 41 IBLA 394, 86 I.D. 374 (1979)

June Oil & Gas, Inc., & Cook Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. 79-1334, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

Kenneth J. Kadow et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alaska. Judgment for defendant, Sept. 7, 1967; dismissed for lack of prosecution, Feb. 2, 1968; no petition.

Kaiser Steel Corp. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 1 IBSMA 184 (1979); Kaiser Steel Corp., 2 IBSMA 158, 87 I.D. 324 (1980)

Kaiser Steel Corp. v. Office of Surface Mining & Enforcement, Civil No. 80-656-M, D.N.M. Suit pending.

Carlyle Kammerer, Jr., et al., 47 IBLA 246 (1980)

Milton L. Mounce v. Cecil D. Andrus, Secretary of the Interior, & Maxwell T. Lieurance, Wyo. State Dir., BLM, Civil No. C80-0240, D. Wyo. Suit pending.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, U.S. Ct. of Appeals, 4th Cir. Petition for review denied, 553 F.2d 361 (4th Cir. 1977).

Vivian Sullivan Karlson, 60 IBLA 10 (1981)

Vivian Sullivan Karlson v. James G. Watt, Civil No. 82-172, D. Or. Suit pending.

R. A. Keans, A-30183 (Feb. 16, 1965)

R. A. Keans v. Stewart L. Udall et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, Nov. 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (Sept. 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd, 265 F. Supp. 848 (1967); aff'd, 404 F.2d 97 (10th Cir. 1968); no petition.

Admin. Appeal of Leo M. Kennerly, Sr. v. Billings Area Dir., Bureau of Indian Affairs, 8 IBIA 106 (1980)

Leo Kennerly, Sr. v. U.S., Cecil Andrus et al., Civil No. CV-81-3-GP, D. Mont. Suit pending.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Corp., 6 IBLA 108 (1972); Petition for reconsideration denied, May 14, 1974

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton et al., Civil No. 616-72. Dismissed with prejudice, Oct. 22, 1974; aff'd, 527 F.2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam E. Hill), 1 IBIA 299, 79 I.D. 583 (1972); 4 IBIA 242 (1975); 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (Oct. 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, Nov. 8, 1961; rev'd, 308 F.2d 650 (1962); no petition.

Suits for Judicial Review

John J. King et al., Fairbanks 033268, 033279
(Sept. 25, 1964)

John J. King et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs & all other parties.

John J. King, Dorothy W. King, Fairbanks 034577
(Oct. 26, 1965)

John J. & Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alaska. Dismissed with prejudice Apr. 24, 1968.

Barbara G. Kirk & Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (Apr. 26, 1963); Barbara G. Kirk & Marjorie G. Wright, A-30022 (Aug. 20, 1963)

George M. Larsen et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four dismissed as moot, three dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Judgment for defendant Nov. 26, 1979; appeal filed Jan. 18, 1980.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individ. & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alaska. Suit pending.

Anquita L. Klunter et al., A-30483, Nov. 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser & Leo J. Kottas v. Stewart L. Udall et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd, 432 F.2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185
(1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum & Cale M. Shearer, A-30838
(Dec. 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall et al., Civil No. 6567, D. Ariz. Judgment for defendant, Jan. 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, Sept. 4, 1974; dismissed, Sept. 11, 1975.

Marlin D. Kuykendall v. Phoenix Area Director & Yavapai-Prescott Tribe, 8 IBIA 76, 87 I.D. 189
(1980)

Yavapai-Prescott Indian Tribe v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-464 PCT-CLH, D. Ariz. Suit pending.

KVK Partnership, 69 IBLA 199 (1982)

KVK Partnership v. James Watt & Jeanette G. Hall, Civil No. 83-0044-C, D.N.M. Suit pending.

Richard M. Lade, as Attorney in Fact for Santa Fe Pacific R.R., A-29121 (Jan. 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R.R. v. Udall et al., Civil No. 67-14, D. Or. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd, 432 F.2d 254 (9th Cir. 1970); no petition.

Carolyn W. Laeser, 53 IBLA 336 (1981)

Carolyn W. Laeser v. U.S., James G. Watt, Secretary of the Interior, & Robert Burford, Dir. of BLM, Civil No. C-81-0458J, D. Utah. Suit pending.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, Mar. 6, 1963; aff'd, 324 F.2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch (Appellants), M. S. Land & Livestock Co. (Intervenor), 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, Mar. 12, 1974; aff'd, Mar. 2, 1976; rehearing denied, Apr. 21, 1976; cert. denied, Nov. 1, 1976.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd, 406 F.2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Suits for Judicial Review

Donald J. Laughlin d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976); On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, Individ. & as Secretary of the Interior, Curt Berklund, Individ. & as Dir., Bureau of Land Management, & H. M. Bruce, Individ. & as Yuma Dist. Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977, Civil No. 77-380-PHX-WPC, D. Ariz. Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, Individ. & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F.2d 782 (1969); no petition.

James R. Learned et al., 50 IBLA 416 (1981); reconsideration denied, Jan. 22, 1981

James R. Learned et al. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C81-0009, D. Wyo. Suit pending.

Robert B. Lee, 69 IBLA 255 (1982)

Robert B. Lee v. Secretary James G. Watt, Civil No. 83-62, D. Mont. Suit pending.

Bruce Lemaire, 63 IBLA 300 (1982)

Bruce Lemaire v. James G. Watt, Civil No. 82-2069. Suit pending.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, Oct. 5, 1964; appeal voluntarily dismissed, Mar. 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd, 427 F.2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis & Mildred C. Lewis, A-28707 (Dec. 30, 1963)

Perley M. Lewis et ux. v. Stewart L. Udall et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, Mar. 22, 1966; aff'd, 374 F.2d 180 (9th Cir. 1967); no petition.

Admin. Appeal of Ruth Pinto Lewis v. Supt. of the Eastern Navajo Agency, 4 IBIA 147, 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individ. & as the Adm'r of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D.N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alaska. Dismissed on merits, Apr. 24, 1964; stipulated dismissal of appeal with prejudice, Oct. 5, 1964.

Roy Lindgren, 43 IBLA 139 (1979)

Roy Lindgren v. Cecil Andrus, Secretary of the Interior, Civil No. C-79-0760 A, D. Utah. Judgment for defendant, Sept. 3, 1980, no appeal.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co. et al. v. Stewart L. Udall, Civil No. 63-264, D. Or. Consolidated with Forsberg v. Udall; Schmand v. Udall; & Property Management Co. v. Udall; Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain. Stipulated dismissal on appeal, Oct. 13, 1966.

Merwin E. Liss et al., 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Floyd O. Lochner, 56 IBLA 271 (1981)

Floyd O. Lochner & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0321, D. Wyo. Suit pending.

Madison D. Locke et al., 65 IBLA 122 (1982)

Madison D. Locke et al. v. James Watt, Secretary of the Interior, et al., Civil No. 82-297 ECR, D. Nev. Suit pending.

Suits for Judicial Review

Frederick W. Lowey et al., 40 IBLA 381 (1979)

Frederick W. Lowey et al. v. Cecil D. Andrus et al., Civil No. 79-3314.

John A. Gallagher et al. v. Cecil C. Andrus et al., Civil No. 79-3315.

J. E. Ham et al. v. Cecil D. Andrus et al., Civil No. 79-3316.

Dr. Heinz & Ursula Lichtenstein et al. v. Cecil D. Andrus et al., Civil No. 79-3317.

James M. Ross et al. v. Cecil D. Andrus et al., Civil No. 79-3318.

Richard K. Vitek et al. v. Cecil D. Andrus et al., Civil No. 79-3319.

For above cases:

Actions consolidated; judgment for defendant, May 28, 1981.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, Oct. 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton et al., Civil No. 9585, D. Wash. Judgment for defendant, Jan. 14, 1972; aff'd, Feb. 26, 1974; no petition.

Frank Lujan, 40 IBLA 184 (1979)

Frank Lujan v. Dept. of the Interior, Civil No. CIV-79-455-C, D.N.M. Complaint dismissed, Feb. 11, 1980; appeal filed, Mar. 6, 1980.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, Dec. 10, 1970; no appeal.

Joseph MacIsaac et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alaska. Dismissed with prejudice for want of prosecution by plaintiff, Dec. 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); per curiam dec., aff'd, 494 F.2d 1156 (D.C. Cir. 1974); no petition.

Richard E. McDonald, Resource Service Co., 56 IBLA 12 (1981)

Richard E. McDonald & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C81-0288, D. Wyo. Suit pending.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Appeal of Carmel J. McIntyre, 4 ANCANB 24, 86 I.D. 663 (1979)

Carmel J. McIntyre v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Curtis V. McVee, Alaska State Dir., BLM, Alaska Native Claims Appeal Board, Eklutna, Inc. & Cook Inlet Region, Inc., Civil No. A79-391 CIV, D. Alaska. Suit pending.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, Feb. 14, 1968; aff'd, 418 F.2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow & Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Or. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd, 289 F.2d 908 (9th Cir. 1961).

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (1982)

General Electric Co. & Nellie McLaughlin v. James G. Watt, Secretary of the Interior, Civil No. CV-82-93-Blg, D. Mont. Suit pending.

Estate of Alvina Beauvois McLean, IA-D-27 (Feb. 14, 1969); IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D.C. Judgment for defendant, Mar. 13, 1970; dismissed for lack of prosecution, Apr. 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61, 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S. Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Dismissed, June 29, 1978.

Suits for Judicial Review

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd, 281 F.2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); Order, Apr. 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, Dec. 13, 1963 (opinion); aff'd, 340 F.2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (Apr. 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, Feb. 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, Apr. 4, 1974; aff'd, Jan. 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, Feb. 4, 1977.

Marathon Oil Co., 16 IBLA 298, 81 I.D. 447 (1974); Atlantic Richfield Co., Marathon Oil Co., 16 IBLA 329, 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

For above cases:
Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Edward Marcinko, 56 IBLA 289 (1981)

Edward Marcinko v. James Watt, Secretary of the Interior, & Rumar Corp., a Texas Corp., Civil No. C81-320, D. Wyo. Suit pending.

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, Jan. 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, Sept. 25, 1973.

Bill Mathis et al., 61 IBLA 131 (1982)

Western Reserves Oil Co. v. James G. Watt et al., CV82-76-Blg., D. Mont. Suit pending.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall et al., Civil No. 6833, D.N.M. Dismissed with prejudice, Jan. 6, 1967; rendered moot by P.L. 89-365.

George C. Matthews, 19 IBLA 215 (1975)

George C. Matthews v. Executive Dir., BLM, Civil No. 79-1295-CIV-NCR, S.D. Fla. Dismissed, Jan. 21, 1980; no appeal.

Guy A. Matthews, 58 IBLA 246 (1981)

Guy A. Matthews & Willa Matthews v. James Watt, Secretary of the Interior, Civil No. CIV 81-1355, D. Idaho. Suit pending.

Ralph E. May, A-29014 (Jan. 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, Mar. 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, Feb. 8, 1967.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

Allan E. Mecham et al. v. Stewart L. Udall et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd, 369 F.2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian, etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, Nov. 16, 1959; motion for reconsideration denied, Dec. 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supp. dec. rendered Sept. 7, 1966; judgment for plaintiff May 16, 1967; no appeal.

Mesa Petroleum Co., 47 IBLA 66 (1980)

Mesa Petroleum Co. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-288-PCT-CAM, D. Ariz. Suit pending.

Arthur J. Messbauer, 59 IBLA 173 (1981)

Arthur J. Messbauer v. James G. Watt, Secretary of the Interior, et al., Civil No. C-82-0023A, D. Utah. Suit pending.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F.2d 548 (1975).

Michigan Wisconsin Pipeline Co., Inc., 54 IBLA 190 (1981)

Michigan Wisconsin Pipeline Co., Inc. v. James G. Watt, Secretary of the Interior, C. Wendall Steen, Acting Area Oil & Gas Super., MGS, & Theodore Krenzke, Dep. Comm'r of the BIA, Civil No. 81-883D, W.D. Okla. Suit pending.

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, Sept. 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, Nov. 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971); 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel et al., Civil No. C-70-2328, D. Cal. Remanded to the Dept. for further proceedings, July 5, 1973; dismissed with prejudice, Feb. 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, Feb. 23, 1961; aff'd, 307 F.2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (Aug. 10, 1959); A-28093 et al. (Oct. 30, 1959); A-28133 (Dec. 22, 1959); A-28378 (Aug. 5, 1960); A-28258 et al. (Feb. 10, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28057 (Oct. 16, 1959); A-28398 (Aug. 31, 1960); A-28359 (July 18, 1960); A-28433 (Aug. 30, 1960); A-28293; A-28436 (June 7, 1960); A-27897; A-27914; A-27923; A-27930; A-28003; A-28014 (Mar. 31, 1959); A-27810 (Jan. 16, 1959)

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, Apr. 4, 1963; aff'd, per curiam dec., Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28528 et al. (Feb. 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28509 (Oct. 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (Feb. 11, 1960); A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd, Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28586; A-28633; A-28671; A-28686 (Jan. 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, Sept. 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (Jan. 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, Nov. 21, 1962 (opinion); appeal dismissed Apr. 12, 1963.

Duncan Miller, A-28937 (Sept. 25, 1962); A-29041 (Nov. 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May 1966.

Duncan Miller, A-29231 (Feb. 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Suits for Judicial Review

Duncan Miller, A-29365 (July 1, 1963); A-29521 (Aug. 29, 1963); A-29633 (Sept. 5, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, Oct. 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, Apr. 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (Mar. 5, 1964); A-30067 (Mar. 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (Apr. 8, 1964); A-30192 (Apr. 9, 1964); A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, Sept. 28, 1965; no appeal.

Duncan Miller, A-30122 (Sept. 23, 1964); A-30451 (Nov. 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, Feb. 15, 1966; dismissed, Apr. 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, Nov. 15, 1965; aff'd, 368 F.2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, Oct. 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed Apr. 12, 1968; petition for mandamus denied, Oct. 14, 1968.

Duncan Miller, A-30517 (Apr. 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, Aug. 11, 1966; appeal dismissed, Sept. 14, 1967.

Duncan Miller, A-30546 (Aug. 10, 1966); A-30566 (Aug. 11, 1966); 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, Apr. 17, 1967; no appeal.

Duncan Miller, A-30570 (Aug. 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alaska. Judgment for defendant, Mar. 13, 1967; motion for reconsideration denied, Sept. 19, 1967; no appeal.

Duncan Miller, A-29231 (Feb. 5, 1963)

See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (Nov. 8, 1966)

Duncan Miller v. Dir. of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, Apr. 25, 1969; no appeal.

Duncan Miller, A-30628 (Nov. 16, 1966); A-30684 (Jan. 19, 1967); A-30708 (Nov. 16, 1966); A-30797 (Sept. 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D.N.M. Dismissed with prejudice, Aug. 28, 1968; motion to set aside judgment denied, Sept. 24, 1968; motion for reconsideration denied, Nov. 4, 1968.

Duncan Miller, A-30891 (Mar. 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, Oct. 14, 1968; no appeal.

Duncan Miller, A-30924 (Nov. 13, 1968); A-30934 (Nov. 22, 1968); A-30966 (Oct. 29, 1968); A-31054 (Aug. 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, Jan. 6, 1972; motion for reconsideration denied, Feb. 7, 1972.

Duncan Miller, A-31087 (Feb. 4, 1970); A-31095 (Feb. 2, 1970); A-31148 (Mar. 2, 1970); A-31159 (Mar. 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, Jan. 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, Nov. 2, 1973; motion for rehearing denied, Nov. 14, 1973; appeal dismissed, Feb. 8, 1974.

Duncan Miller, 6 IBLA 283 (1972); 6 IBLA 507 (1972);
7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, Feb. 7, 1973; motion to set aside judgment denied, Mar. 5, 1973.

Duncan Miller, 7 IBLA 343 (1972); 16 IBLA 24 (1974);
16 IBLA 71 (1974); 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Dept. of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, Dec. 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, Oct. 31, 1974; motion to amend complaint denied, Dec. 18, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Dept. of the Interior, Civil No. 76-48 BLG, D. Mont. Dismissed, Nov. 4, 1976.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Admin. Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, Oct. 30, 1973; motions for reconsideration denied respectively, Dec. 4, 1973, Jan. 4, 1974, Apr. 5, 1974; appeal dismissed, & Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of cert. filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973);
IBLA 73-319, 406, 407, 410, 411, 412; IBLA 74-12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Dept. of the Interior, Civil No. 1929-73. Dismissed, Feb. 15, 1974; appeal dismissed, Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of cert. filed; no petition.

Duncan Miller, 12 IBLA 201 (1973); 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974); Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Dept. of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, Oct. 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975); 19 IBLA 188 (1975); 20 IBLA 1 (1975); 20 IBLA 9 (1975); 20 IBLA 19 (1975); 21 IBLA 50 (1975); 22 IBLA 52 (1975); IBLA 75-379 (dismissed by Order, Mar. 20, 1975); IBLA 75-365 (dismissed by Order, Mar. 24, 1975); IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by Orders, Apr. 30, 1975); IBLA 75-278 (dismissed by Order, May 22, 1975)

See also Evelyn R. Robertson

Duncan Miller v. The Hon. Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, Aug. 8, 1975; reconsideration denied, Sept. 16, 1975. Appeal dismissed, Oct. 12, 1976.

Duncan Miller v. The Hon. Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individ. & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, Dec. 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nov. 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, Nov. 13, 1967; aff'd, 413 F.2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough et al., Civil No. C-200-63, D. Utah. Judgment for defendant, Jan. 8, 1964; no appeal.

Donald E. Monington, 42 IBLA 380 (1979)

Donald E. Monington v. Cecil D. Andrus, Secretary of the Interior, & Delmar D. Vail, Acting State Dir., BLM, Civil No. C79-366, D. Wyo. Aff'd, Apr. 11, 1980; no appeal.

Monsanto Co., 51 IBLA 271 (1980)

Monsanto Co. v. James Watt, Secretary of the Interior, Civil No. 81-A-272, D. Colo. Judgment for plaintiff, Jan. 5, 1982.

Suits of Judicial Review

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083 (9th Cir.). Dismissed for lack of jurisdiction, Apr. 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, Apr. 11, 1974.

Bobby Lee Moore et al., 72 I.D. 505 (1965);
Anquita L. Klunter et al., A-30483 (Nov. 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Admin. et al., Civil No. 3253, S.D. Cal. Judgment for defendant, Apr. 12, 1965; aff'd, 377 F.2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, Feb. 20, 1961 (opinion); aff'd, 306 F.2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., Inc., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r, 345 F.2d 833 (1965); Comm'r's report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F.2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on Oct. 6, 1969; judgment for plaintiff, Feb. 17, 1970.

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (1982)

Jack M. Mosely, Charles S. Hertz v. DOI et al., Civil No. 82-1560. Suit pending.

Mildred A. Moss et al., 28 IBLA 364 (1977);
Reconsideration denied, Mar. 18, 1977

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Dir., Bureau of Land Management & Raul E. Martinez, Chief, Minerals Sec., Bureau of Land Management, Civil No. CIV 77-234 B, D.N.M. Judgment for defendant, Nov. 1, 1977; aff'd, Sept. 20, 1978.

Mountain Enterprises Coal Co., 3 IBSMA 338, 88 I.D. 861 (1981)

Mountain Enterprises Coal Co. v. Secretary of the Interior, Civil No. 81-0325-B, W.D. Va. Suit pending.

Estate of Winnie Moves Camp, 7 IBIA 266 (1979)

James Moves Camp, Bernard Moves Camp, Annie Moves Camp Bad Cobb & Mary Moves Camp Between Lodges v. Cecil Andrus, Secretary of the Interior, Civil No. 80-5020, D.S.D. Suit pending.

Glenn Munsey, Earnest Scott & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972); 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-2095, U.S. Ct. of Appeals, D.C. Cir. Vacated & remanded, 507 F.2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 8 IBMA 43, 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Naartex Consulting Corp., 48 IBLA 166

Naartex Consulting Corp. v. James G. Watt et al., Civil No. 81-1540. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Morris Thompson, Comm'r of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, Jan. 20, 1978; aff'd, 638 F.2d 113 (9th Cir. 1981); no petition.

Navajo Tribe of Indians v. State of Utah, 12 IBLA 1, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo & Frederick Fishman, Members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, Jan. 4, 1979.

Charles Y. Neff, 64 IBLA 234 (1982)

Charles Y. Neff v. James G. Watt & Fred Gibson, Civil No. C82-0337, D. Wyo. Suit pending.

Nevada Pacific Co., 46 IBLA 208 (1980)

Nevada Pacific Co. et al. v. Cecil D. Andrus, Secretary of the Interior, U.S., Civil No. CV-LV 80-431 HEC, D. Nev. Suit pending.

Richard L. Nevitt, 47 IBLA 257 (1980)

Richard L. Nevitt v. Cecil D. Andrus, Secretary of the Interior, Curtis McVee, Acting State Dir., Alaska, BLM, Civil No. A80-226 CIV, D. Alaska. Suit pending.

New England Fish Co., 42 IBLA 200 (1979)

New England Fish Co. v. Robert E. Sorenson, Chief, Branch of Lands & Minerals Operations, BLM, Alaska State Office, Dept. of the Interior, Civil No. A79-283 CIV, D. Alaska. Suit pending.

Suits for Judicial Review

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alaska. Judgment for defendant, Sept. 17, 1965; aff'd, 385 F.2d 177 (9th Cir. 1967); no petition.

Robert D. Mininger (Appellant), Paul C. Kohlman (Appellee), 16 IBLA 200 (1974)

Robert D. Mininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, Mar. 20, 1975; no appeal.

N. L. Baroid Petroleum Services, 60 IBLA 90 (1981)

NL Industries, Inc. v. James Watt, Civil No. CV-LV-82-176 RDF, D. Nev. Suit pending.

Leonard E. Noren, A-27583 (Sept. 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, Sept. 17, 1965; rev'd & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al.; rev'd & remanded, 370 F.2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Comm'r's report adverse to U.S. issued Dec. 10, 1971; judgment for plaintiff, 458 F.2d 64 (1972).

Northwest Citizens for Wilderness Mining, 33 IBLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, Nov. 15, 1963; case reinstated, Feb. 19, 1964; remanded, Apr. 4, 1967; rev'd & remanded with directions to enter judgment for appellant, 389 F.2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Adm'r of Estate of Valentine M. O'Grady, 47 IBLA 83 (1980)

Thomas James O'Grady et al. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-1782. Suit pending.

Oil & Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alaska. Withdrawn Apr. 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alaska. Dismissed, Apr. 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alaska. Dismissed, Oct. 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alaska. Dismissed, Oct. 29, 1963 (oral opinion); aff'd, 332 F.2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alaska. Dismissed without prejudice, Mar. 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977)

Oil Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Dept. of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, Apr. 9, 1976.

Old Ben Coal Corp., 81 I.D. 428; 436; 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals et al., Nos. 74-1654, 74-1655, 74-1656, U.S. Ct. of Appeals for the 7th Cir. Board's dec. aff'd, 523 F.2d 25 (7th Cir. 1975).

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, U.S. Ct. of Appeals, D.C. Cir. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Suits for Judicial Review

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (Apr. 19, 1966);
A-30488 (Supp.) (Dec. 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall,
Civil No. 3556-SD-K, S.D. Cal. Remanded to
the Dept. for clarification of Dept. dec.,
Aug. 12, 1966; Order denying defendant's motion
for summary judgment, without prejudice & remand-
ing case for clarification of the affirmance of
the Dept. dec., Mar. 8, 1967; no appeal; stipu-
lated dismissal, Nov. 22, 1971.

Clarence C. Ore et al., 4 OHA 125 (1981).
Order staying dec. dated Mar. 27, 1981;
Order modifying dec. dated June 18, 1981.
Petition for reconsideration denied by Order
dated July 28, 1981.

Bernice Beatty et al. v. BLM, Dept. of
the Interior, & U.S., Civil No. 81-1066-
K-I, S.D. Cal. Suit pending.

Oregon Portland Cement Co., 66 IBLA 204
(1982)

Oregon Portland Cement Co. v. James G.
Watt, Secretary of the Interior, et al.,
Civil No. 82-1087, D. Or. Suit pending.

Appeal of Ounalashka Corp., 1 ANCAB 104, 83 I.D.
475 (1976)

Ounalashka Corp., for & on behalf of its
Shareholders v. Thomas Kleppe, Secretary of
the Interior, & his successors & predecessors
in office, et al., Civil No. A76-241 CIV,
D. Alaska. Suit pending.

Oyate, Inc. et al., IA-2629

Oyate, Inc., a nonprofit South Dakota Corp.,
et al. v. Rogers C. B. Morton, Civil No. 687-73.
Dismissed, Jan. 7, 1974.

Pacific Power & Light Co., 45 IBLA 127 (1980)

Pacific Power & Light Co. v. Cecil Andrus,
Secretary of the Interior, Civil No. C80-
0073, D. Wyo. Suit pending.

D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977);
On Reconsideration, 38 IBLA 23, 85 I.D. 408
(1978)

John S. Runnells v. Cecil Andrus, Secretary
of the Interior, et al., Civil No. C-77-0268,
D. Utah. Rev'd & remanded to Bureau of Land
Management for issuance of the leases, Feb. 19,
1980; no appeal.

Elizabeth Pagedas, 38 IBLA 130 (1978); On Recon-
sideration, 40 IBLA 21 (1979)

Elizabeth Pagedas, Athena Pagedas, Kap
Bae, Anna Srantos & Fred Engle, d/b/a
Resource Service Co. v. Cecil D. Andrus,
Secretary of the Interior, & Wyo. State
Office, Bureau of Land Management, Civil
No. 79-2456. Suit pending.

Eugene C. Paine et al., A-27632 (Aug. 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall,
Civil No. 2607-58. Judgment for plaintiff,
Sept. 24, 1959; vacated & remanded, Wright v.
Seaton, Misc. 1403, Jan. 11, 1960. Judgment
for plaintiff, May 4, 1960; rev'd & remanded,
Feb. 23, 1961; Judgment for defendant,
Mar. 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer
Mitchell, Jr., Civil No. 47552, N.D. Cal.
Judgment for plaintiff, Dec. 16, 1970; rev'd,
496 F.2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (Dec. 18,
1959)

Pan American Petroleum Corp. v. Stewart L.
Udall, Civil No. 960-60. Judgment for plain-
tiff, 192 F. Supp. 626 (1961); subsequent admin.
appeal & supp. complaint filed; judgment for
plaintiff, Feb. 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710
(1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052,
U.S. Ct. of Appeals, D.C. Cir. Voluntary dis-
missal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58.
Stipulated judgment for plaintiff, Dec. 19,
1958.

Peabody Coal Co., 34 IBLA 139; 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary
of the Interior, Guy Martin, Ass't Secretary,
Land & Water Resources, Frank Gregg, Dir.
Bureau of Land Management, Civil No. C78-161,
D. Wyo. Judgment for plaintiff, Sept. 19, 1979;
no appeal.

Mary C. Pemberton, 38 IBLA 118 (1978)

Mary C. Pemberton v. Cecil D. Andrus, Secretary
of the Interior, Civil No. 80-95-BLG, D. Mont.
Suit pending.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68.
Judgment for defendant, 427 F.2d 722 (1970).

Suits for Judicial Review

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322
(June 7, 1966)

Don & Winona James v. Mabel George Gomez et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, Sept. 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, Dec. 1, 1975; no appeal.

Frederick T. Peters et al., 41 IBLA 262 (1979)

Stewart Capital Corp., Cynthia S-H Bowers, Marvyn Carton, William Feick, Jr., Amey M. Harrison, Kenneth K. Kohrs, Phyllis Johnston, Barbara Michaels, Frederick T. Peters, R. J. Russette, Rharrc Assocs., Donald Beck, Sherwin Gandee, Irwin Kramer & Joseph Fiato v. Raul Martinez, Chief, Mineral Sec., New Mexico State Office, BLM, Civil No. CIV-79-042C, D.N.M. Dismissed Oct. 28, 1980.

Kent E. Peterson, 30 IBLA 199 (1977)

Kent E. Peterson v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Dir. BLM, Robert O. Buffington, State Dir., BLM, Idaho, Civil No. C-79-0527, D. Utah. Suit pending.

M. Blaine Peterson, A-28111 (Nov. 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, Nov. 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Judgment for plaintiff, Mar. 23, 1981; no appeal.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Ass't Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Judgment for plaintiff, Mar. 23, 1981; no appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1959)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F.2d 793 (1968).

City of Phoenix v. Alvin B. Reeves et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as Heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a Municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, Aug. 9, 1974; reconsideration denied, Sept. 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, Aug. 2, 1962; aff'd, 317 F.2d 573 (1963); no petition.

Earl W. Platt, 43 IBLA 41, 86 I.D. 458 (1979)

Barbara Garcia v. Cecil Andrus, Secretary of the Interior, Earl W. & Buena Platt, Civil No. CIV-80-382 PCT, D. Ariz. Suit pending.

Platte Valley Construction Co., IBCA-168 (Aug. 28, 1958)

George Stanek et al. v. U.S., Ct. Cl. 189-72. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, Dec. 31, 1980.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, U.S. Ct. of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (Jan. 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, Aug. 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, Dec. 7, 1964.

L. O. Power et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX-WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (Aug. 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Suits for Judicial Review

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975); 26 IBLA 340 (1976) (Supp.)

Barbara C. Lisco v. The Hon. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D.N.M. Remanded to the Dept., Apr. 3, 1976.

Nola Grace Ptasynski v. The Hon. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D.N.M. Remanded to the Dept., Apr. 6, 1976; judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (Oct. 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, Aug. 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978); 8 IBIA 251 (1981)

Martha Alfreda Racine Crawford et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-78-8-6F, D. Mont. Dismissed July 13, 1979; rev'd & remanded, Oct. 30, 1980; remanded to IBIA, Feb. 24, 1981.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, Oct. 30, 1969; dismissed, Nov. 17, 1970.

Ram Petroleums, Inc., & Ramoco, Inc., 37 IBLA 184 (1978)

Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of the IBLA; rev'd, 478 F. Supp. 1165 (D. Nev. 1979); appeal filed, Dec. 21, 1979.

Ramoco, Inc., & Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of IBLA & L. Pollick, Chief Minerals Sec., Utah State Office of BLM, Civil No. C-79-0007, D. Utah. Judgment for defendants, Nov. 14, 1979; aff'd, May 27, 1981.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 2 IBIA 305, 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, Aug. 11, 1975; no appeal.

Stuart Grant Ramstad, 55 IBLA 223 (1981); Reconsideration denied, Order dated Sept. 30, 1981

Stuart Grant Ramstad v. James G. Watt et al., Civil No. A81-458 CIV, D. Alaska. Suit pending.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, Dec. 13, 1968; subsequent Contract Officer's dec., Dec. 3, 1969; interim dec., Dec. 2, 1969; Order to Stay Proceedings until Mar. 31, 1970; dismissed with prejudice, Aug. 3, 1970.

Estate of Elgin Red Elk, IA-1230 (Nov. 13, 1964)

Bert Taunah et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, Apr. 27, 1967; rev'd & remanded, 398 F.2d 795 (10th Cir. 1968); no petition.

Redwood Empire Land & Royalty Co., 62 IBLA 296 (1982)

Redwood Empire Land & Royalty Co. v. James G. Watt, no Civil No., D. Colo.

Redwood Empire Land & Royalty Co., 64 IBLA 267 (1982)

Redwood Empire Land & Royalty Co. v. James Watt et al., Civil No. 82-174 Blg., D. Mont. Suit pending.

Estate of Crawford J. Reed (Unallotted Grow No. 6412), 1 IBIA 326, 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton et al., Civil No. 1105, D. Mont. Dismissed June 14, 1973; no appeal.

Henry E. Reeves, 31 IBLA 242 (1977)

Henry E. Reeves v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. A-158-73 Civ, D. Alaska. Partial judgment for plaintiff, 465 F. Supp. 1065 (1979); rev'd, Oct. 30, 1980; appeal dismissed Apr. 14, 1981.

Reichhold Energy Corp., 40 IBLA 134 (1979)

Reichhold Energy Corp. v. Cecil D. Andrus, Civil No. 79-1274. Judgment for defendant, May 30, 1980; appeal filed.

Reitz Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 2 IBMA 381 (1980)

Reitz Coal Co. v. Cecil D. Andrus, Civil No. 80-1832, W.D. Pa. Suit pending.

Reliable Coal Corp., 1 IBMA 97, 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1477, U.S. Ct. of Appeals, 4th Cir. Board's dec. aff'd, 478 F.2d 257 (4th Cir. 1973).

Republic Steel Corp., 5 IBMA 306, 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, Feb. 22, 1978.

Suits for Judicial Review

Resource Service Co., Grace K. Greco, 55 IBLA 343 (1981)

Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C80-2080, D. Wyo. Suit pending.

William C. Reuling, 59 IBLA 226 (1981)

William C. Reuling v. James Watt et al., Civil No. C82-0058-C, D.N.M. Suit pending.

R. G. Brown, Jr., & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, Apr. 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, Mar. 6, 1958; no appeal.

Simon A. Rife, 56 IBLA 378 (1981)

Simon A. Rife v. James G. Watt et al., Civil No. C81-0318, D. Wyo. Suit pending.

Riley Hall Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, 1 IBSMA 292 (1979)

Riley Hall Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-213, E.D. Ky. Suit pending.

Mark B. Ringstad et al., Inlet Oil Corp. et al., Robert L. Lawler et al., A-31111; A-31115; A-31134; A-31188 (Mar. 17, 1970)

Robert Lawler et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alaska.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alaska. Stipulated dismissal without prejudice, Aug. 11, 1970.

For above cases:

Actions consolidated, June 26, 1970. Judgment for defendant, Feb. 22, 1972; no appeal.

LaPreal C. Rinker, IBLA 81-845, Order dated Oct. 23, 1981

LaPreal C. Rinker v. James Watt, Secretary of the Interior, et al., Civil No. Civ-82-0065 HB, D.N.M. Suit pending.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965); reconsideration denied by letter dec. dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971); 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedeaux et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, Jan. 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, Oct. 29, 1973; amended judgment for plaintiff, Nov. 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, Apr. 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, Oct. 2, 1975; judgment for plaintiff, Dec. 1, 1975.

Roberts Brothers Coal Co., 2 IBSMA 284, 87 I.D. 439 (1980)

Roberts Brothers Coal Co. v. Cecil D. Andrus et al., Civil No. 80-016900 (G), W.D. Ky. Suit pending.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963) (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, Mar. 13, 1964; aff'd, 349 F.2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alaska. Dismissed with prejudice, Sept. 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, Apr. 4, 1964; aff'd, 349 F.2d 195 (1965); no petition.

Estate of Clark Joseph Robinson, 7 IBIA 74, 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D.S.D. Suit pending.

George Rodda, Jr., 27 IBLA 186 (1976); 37 IBLA 189 (1978)

Norman Lewis McBride (Assignor) & George Rodda, Jr. (Assignee) v. Secretary of the Interior, Roy Maggart, an Individ., Eldon J. Fairbanks, an Individ., Civil No. CIV 79-96 TUC-MAR, D. Ariz. Suit pending.

M. E. Rogers, 47 IBLA 196 (1980)

M. E. Rogers v. U.S., Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Civil No. 80-114-H, D. Mont. Suit pending.

Suits for Judicial Review

Rosebud Coal Sales Co., 37 IBLA 251, 85 I.D. 396
(1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Judgment for plaintiff, Oct. 17, 1979. No appeal.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in His Official Capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Edgar Rundle, A-29593 (Aug. 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, Sept. 22, 1965; aff'd, 379 F.2d 112 (1967); cert. denied, 389 U.S. 845 (1967)

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Alex Sachen, Resource Service Co., 56 IBLA 116 (1981)

Alex & Mary Jane Sachen & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0298, D. Wyo. Suit pending.

Louise Safarik, A-28307 et al. (Apr. 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Louise Safarik et al., A-28562 et al. (Jan. 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Management, Civil No. A-173-73 CIV, D. Alaska. Dismissed, Mar. 4, 1975; reinstated by court order, Apr. 9, 1975; remanded to the Bureau of Land Management for proceedings, Mar. 19, 1976.

Louis Samuel et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D.N.M. Dismissed with prejudice, Jan. 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Management, & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, Oct. 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton et al., Civil No. 03266, E.D. Mich. Dismissed, Feb. 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, Aug. 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd sub nom. S. Jack Hinton et al. v. Stewart L. Udall, 364 F.2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supp. by M-36767, Nov. 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D.N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed Jan. 12, 1966; order vacating prior judgment issued Jan. 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (Apr. 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen et al., Civil No. 7135, D.N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, Individ. & as Secretary of the Interior, Daniel P. Baker, Individ. & as Dir. for the State of Wyo., Bureau of Land Management, & Glenna M. Lane, Individ. & as Chief, O&G Sec., Land Office, Wyo., Civil No. 5949, D. Wyo. Dismissed, Nov. 15, 1974 (opinion); no appeal.

Suits for Judicial Review

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., supra, filed June 3, 1974.

Lloyd Schade, 12 IBLA 316 (1973)

Lloyd Schade v. Cecil Andrus, Secretary of the Interior, State of Alaska, Civil No. A-76-28, D. Alaska. Judgment for plaintiff, Oct. 2, 1978; aff'd, 638 F.2d 122 (9th Cir. 1981).

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (Aug. 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, Apr. 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (Jan. 8, 1964); reconsideration denied, Mar. 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814; A-30816 (Nov. 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, Oct. 31, 1968; aff'd, 419 F.2d 663 (1969); petition for rehearing en banc denied, Oct. 8, 1969; no petition.

Joseph M. Schuck, A-28603 (Aug. 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, Dec. 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, Jan. 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, Mar. 19, 1962; no appeal.

Seal & Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, Jan. 31, 1964; no appeal.

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (1981)

Robert Semanko, Mary L. Hollebon, & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. 82-0165. Suit pending.

Admin. Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 3 IBIA 145, 81 I.D. 651 (1974)

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

John J. Sexton, 15 IBLA 69 (1974); On Reconsideration, 20 IBLA 187 (1975)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alaska. Dismissed, Jan. 5, 1977.

William D. Sexton et al., 9 IBLA 316 (1973); R. C. Bailey et al., 7 IBLA 266 (1972); R. C. Bailey & C. Burglin, 10 IBLA 281 (1973); Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973); Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton et al., Civil No. F-9-73, D. Alaska.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alaska.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alaska.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alaska.

For above cases:

Actions consolidated by order dated July 23, 1974. Judgment for defendant, Aug. 5, 1974; aff'd, 527 F.2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 6 IBMA 28, 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, U.S. Ct. of Appeals, 4th Cir. Suit pending.

Suits for Judicial Review

John W. Shaw, A-29143 (Apr. 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Or. Aff'd, 264 F. Supp. 390 (1967); appeal docketed Mar. 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Dir. of the New Mexico State Office of the Bureau of Land Management, Civil No. CIV-76-338-P, D.N.M. Judgment for defendant, Feb. 22, 1977; aff'd, Sept. 17, 1977.

Shell Oil Co., A-30575 (Oct. 31, 1966); Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, Aug. 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Judgment for defendant, Dec. 31, 1979; appeal filed Jan. 21, 1980.

Sinclair Oil & Gas Co., 5 IBMA 217, 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd, 432 F.2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 5 IBMA 217, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior--Mining Enforcement & Safety Administration (MESA), No. 75-1292, U.S. Ct. of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F.2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D.N.M. Judgment for plaintiff, Aug. 7, 1975 (opinion); no appeal.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (1979)

Karen Hayes, Adm'x of the Estate of Keith C. Hayes, Deceased, Dorothy Smith v. Cecil Andrus, Secretary of the Interior, Civil No. C-LV-79-369-HEC, D. Nev. Dismissed (1981).

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, Feb. 3, 1970.

Geneiva Nell Maston Smith et al., 48 IBLA 199 (1980)

Moss J. Witt v. U.S. et al., Civil No. Civ-LV-210, RDF, D. Nev. Judgment for defendant, Feb. 13, 1981; appeal filed Feb. 20, 1981.

James W. Smith, 34 IBLA 146 (1978)

James W. Smith v. U.S., Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Edward L. Hastey, as California State Dir., BLM, Civil No. 79-0042-E, S.D. Cal. Suit pending.

L. B. Smith et al., A-30447 (Oct. 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (1979)

Mardelle M. & Sherman C. Smith v. Cecil Andrus, Secretary of the Interior, Robert Bergland, Secretary of Agriculture, Clay Beal, Super., Chugach Nat'l Forest, Curtis McVee, Alaska State Dir., BLM, Civil No. A80-050 CIV, D. Alaska. Judgment for defendant, May 8, 1981, aff'd, Sept. 21, 1982. No petition.

George Val Snow, 46 IBLA 101 (1980)

George Val Snow & Kathleen Snow v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C80-0231A, C.D. Utah. Suit pending.

Stanley C. Soho, A-28135 (Aug. 19, 1959); A-28135 Supp. (July 17, 1961); supp. by dec. dated Feb. 1, 1963, by Dir., Bureau of Land Management, approved by the Secretary Mar. 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, Sept. 3, 1963; aff'd, 336 F.2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho et al., A-28175 (Apr. 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, Jan. 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd, Sept. 12, 1978.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, Dec. 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970); 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, Heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supp. complaint filed, Aug. 1, 1975; judgment for defendant, Nov. 29, 1976; appeal filed, Jan. 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (Jan. 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd, 371 F.2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, Jan. 14, 1970; appeal dismissed, Apr. 6, 1970.

Southwestern Petroleum Corp. et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D.N.M. Judgment for defendant, Mar. 8, 1965; aff'd, 361 F.2d 650 (10th Cir. 1966); no petition.

Ervin Staacke et al., 62 IBLA 278 (1982)

Rose May Foley et al. & Resource Service Co., Inc. v. James G. Watt et al., Civil No. 82-1642. Suit pending.

Geosearch, Inc., Robert G. Scholl & Richard Doerr v. James G. Watt et al., Civil No. 82-0240, D. Wyo. Suit pending.

Standard Oil Co. of California et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel et al., Civil No. A-159-69, D. Alaska. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd sub nom. Standard Oil Co. of California v. Rogers C. B. Morton et al., 450 F.2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D.N.M. Judgment for plaintiff, Jan. 21, 1965; no appeal.

John Walter Starks, 55 IBLA 266 (1981)

John Walter Starks v. James G. Watt, Civil No. C-81-0711C, D. Utah. Dismissed with prejudice, Mar. 2, 1982. No appeal.

Starling Brokers et al., 6 IBLA 237 (1972)

Hillin L. Arnold et al. v. Rogers C. B. Morton et al., Civil No. A-157-72 Civ., D. Alaska. Judgment for defendant, Mar. 20, 1974; rev'd & remanded, 529 F.2d 1101 (9th Cir. 1976); aff'd, June 29, 1981; no petition.

Stauffer Chemical Co. et al., 49 IBLA 381 (1980)

Monsanto Co., J. R. Simplot Co., Beker Industries Corp., & Stauffer Chemical Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. Civ 81-4013, D. Idaho. Suit pending.

Ross Stegman, A-30812 (Nov. 21, 1967); U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, Dec. 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & Real Party in Interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, Sept. 10, 1975; rev'd, Oct. 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel et al., Civil No. 8074, D.N.M. Judgment for defendant, Jan. 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd, 444 F.2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1038, D. Idaho. Suit pending.

Nancy L. Stewart, Resource Service Co., 56 IBLA 122 (1981)

Nancy L. Stewart & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0299, D. Wyo. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior et al., Civil No. LV-2112, D. Nev. Judgment for defendant, Aug. 29, 1975; amended Order judgment for defendant, Sept. 4, 1975.

Suits for Judicial Review

Bernard S. Storper, 60 IBLA 67 (1981)

Bernard S. Storper v. James G. Watt et al., Civil No. 82-0449. Judgment for defendant, Jan. 20, 1983; no appeal.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Dept. of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alaska. Remanded to the Dept., May 6, 1976; aff'd in part, rev'd & remanded in part, Sept. 8, 1981.

Marta F. Stroock, 63 IBLA 119 (1982)

Marta F. Stroock v. James Watt, Secretary of the Interior, et al., Civil No. NC-82-0093W, D. Utah. Suit pending.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (1981)

Atlantic Richfield Co. v. James G. Watt, Secretary of the Interior, Civil No. CIV 81-0615 M, D.N.M. Suit pending.

Supron Energy Corp. et al., 46 IBLA 181 (1980)

Conoco, Atlantic Richfield Co., & Tenneco Oil Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-80-0261M, D.N.M.

Exxon Co., U.S.A. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ-80-430-JB, D.N.M.

Supron Energy Corp., Southland Royalty Co., & Consolidated O&G Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ-80-0463 JB, D.N.M.

For above cases:
Actions consolidated Nov. 16, 1980. Suit pending.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (Nov. 10, 1966); Florence Emily Tagala v. Norman C. Gorsuch, Special Admin. of the Estate of Amanda Price, A-31241 (Jan. 9, 1970)

Amanda Price v. Udall, Civil No. 33-67, D. Alaska. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F.2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, Nov. 1, 1962 (opinion); rev'd, 324 F.2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd, 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Appeal of Tanacross, Inc., 4 ANCAB 173, 87 I.D. 123 (1980)

Tanacross, Inc. v. James G. Watt et al., Civil No. A82-005 CIV, D. Alaska. Suit pending.

Texaco, Inc., 75 I.D. 8 (1968)

Texaco, Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd in part & remanded, 437 F.2d 636 (1970); aff'd in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97; reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, Dec. 14, 1961.

Estate of Tim Tieyah, 7 IBIA 234 (Oct. 17, 1979)

Marie Tieyah Carr v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 79-1300-D, D. Okla. Suit pending.

Ray H. Thames, 30 IBLA 167 (1977)

Maude E. McDonald & Harriet S. Walsh v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing, Douglas E. Henriques, & Martin Ritvo, Admin. Judges Interior Board of Land Appeals, Lowell J. Udy, Dir. of Lands & Minerals, ESLO, BLM, Civil No. S77-0333(C), S.D. Miss. Judgment for defendant, Jan. 29, 1980; rev'd & remanded, Aug. 21, 1982; judgment for plaintiff, Feb. 19, 1982.

Albert Thomas et ux. (Contestees) v. Sam A. Devilbiss et ux. (Contestants), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd, 552 F.2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, Sept. 18, 1958; aff'd, 270 F.2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Rupert Thorne, 58 IBLA 319 (1981)

Rupert Thorne v. James Watt, Secretary of the Interior, Civil No. 82-1019, D. Idaho. Suit pending.

Thoroughfare Coal Co., 3 IBSMA 72, 88 I.D. 406 (1981)

Thoroughfare Coal Co. v. James G. Watt, Secretary of the Interior, Civil No. C81-0068, W.D. Ky. Suit pending.

Suits for Judicial Review

Thor-Westcliffe Development, Inc., 70 I.D. 134
(1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D.N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall et al., Civil No. 2406-61. Judgment for defendant, Mar. 22, 1962; aff'd, 314 F.2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, Aug. 2, 1962; aff'd, 350 F.2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, Sept. 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties, Inc., d/b/a Toke Cleaners & Launderers v. U.S., Dept. of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D.N.D. Stipulation for dismissal & Order dismissing case, June 16, 1975.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341, 87 I.D. 570 (1980)

Tollage Creek Elkhorn Mining Co. v. Cecil D. Andrus, Civil No. 80-230, E.D. Ky. Suit pending.

Estate of Phillip Tooisgah, 4 IBIA 189, 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Dismissed, 418 F. Supp. 913 (1976). No appeal.

TOSCO v. Secretary of the Interior
See Union Oil Co., 71 I.D. 169 (1964)

Tree Land Nursery, Inc., IBCA-436 (Oct. 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

William M. Turner, 54 IBLA 111 (1981)

William M. Turner v. James G. Watt, Civil No. 81-0832JB, D.N.M. Suit pending.

Tyee Construction Co., IBCA-112 & 113 (Apr. 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co., 56 IBLA 206; reconsideration granted, 58 IBLA 166 (1981)

Union Oil Co. of California v. James G. Watt et al., Civil No. 82-427, D. Ariz. Suit pending.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968); 76 I.D. 69 (1969)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968; modified, July 31, 1968; aff'd, 409 F.2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, Dec. 27, 1965; no appeal.

Union Oil Co. of California, 48 IBLA 145; reconsideration granted, Order dated Oct. 7, 1980.

Union Oil Co. of California v. Cecil D. Andrus, Civil No. 80-2278. Interior Board of Land Appeals remanded the case with instructions to consider the appeal on its merits.

Union Oil Co. of California et al., 71 I.D. 169 (1964); 72 I.D. 313 (1965); U.S. v. Bohme; U.S. v. Exxon Corp.; U.S. v. Brown, 48 IBLA 267, 87 I.D. 248 (1980); 51 IBLA 97, 87 I.D. 535 (1980)

Penelope Chase Brown et al. v. Stewart Udall, Civil No. 9202, D. Colo.

Barnette T. Napier et al. v. Secretary of the Interior, Civil No. 8691, D. Colo.

The Oil Shale Corp. et al. v. Secretary of the Interior, Civil No. 8680, D. Colo.

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8685, D. Colo.

For above cases:

Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo.

Harlan H. Hugg et al. v. Stewart L. Udall, Civil No. 9252, D. Colo.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo.

The Oil Shale Corp. et al. v. Stewart L. Udall, Civil No. 9465, D. Colo.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo.

For above cases:

Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd, 289 F.2d 790 (1961); no petition.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd, 379 F.2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, U.S. Ct. of Appeals, 7th Cir. Board's dec. aff'd, 561 F.2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

U.S. v. Alonzo A. Adams et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, Nov. 27, 1957 (opinion); rev'd & remanded, 271 F.2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F.2d 37 (9th Cir. 1959)

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, Jan. 29, 1962 (opinion); judgment modified, 318 F.2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Or. Judgment for defendant, July 5, 1978.

U.S. v. A. F. Anderson et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with Walter H. Burkhardt et al. v. Rogers C. B. Morton et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of Nov. 19, 1975; dismissed, Nov. 28, 1975.

U.S. v. Arizona Exploration Co. et al., A-28876 (June 22, 1962)

Blaine J. Lord et al. v. Roy T. Helmandollar et al., Civil No. 987-63. Judgment for defendants, Sept. 30, 1963; appeal dismissed, 348 F.2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individ. & as Secretary of the Interior & Stanley Gurnewald, Individ. & as Dist. Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, Apr. 25, 1977; appeal filed, June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an Individ. & as Executrix of the Last Will of E. A. Barrows, Deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, Apr. 20, 1970; aff'd, 447 F.2d 80 (9th Cir. 1971).

Suits for Judicial Review

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Or. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alaska. Judgment for defendant, June 19, 1978; no appeal.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd & remanded with instructions to remand to the Secretary of the Interior, Mar. 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co. et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, Sept. 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D.N.M. Dismissed, Feb. 28, 1977; aff'd, Nov. 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alaska. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (Oct. 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, Aug. 19, 1964 (opinion); no appeal.

U.S. v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (1979)

Jack Zemmy Boyd, Jr. v. Cecil D. Andrus, Secretary of the Interior, Civil No. A79-322, D. Alaska. Judgment for defendant, Mar. 14, 1980; dismissed & remanded, Aug. 17, 1981; vacated, Aug. 20, 1981.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969); reconsideration denied, Jan. 22, 1970

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd & remanded, 519 F.2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, Aug. 13, 1973; aff'd, 500 F.2d 200 (9th Cir. 1974); no petition.

U.S. v. Brubaker-Mann, Inc., R. W. Brubaker a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker & William J. Mann, a/k/a W. J. Mann, Civil No. 74-742-JWC, C.D. Cal. Stipulated agreement dated Jan. 30, 1975, & accepted by the defendants on Feb. 3, 1975; final judgment entered May 7, 1975.

U.S. v. Ernest L. & Evelyn B. Brunskill, 51 IBLA 199 (1980)

Ernest L. & Evelyn B. Brunskill v. The Secretary of the Interior, Civil No. CIV-S-81-140 MLS, E.D. Cal. Suit pending.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alaska. Remanded to the Agency for final consideration on the merits, Jan. 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102, 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Applegate, Dist. Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Dismissed with prejudice, Nov. 27, 1978.

U.S. v. Calhoun & Howell of Oregon, Ltd.; U.S. v. Lee Temple, A-31004 (Aug. 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Or. Judgment for defendant, Sept. 24, 1970; no appeal.

U.S. v. John C. Chapman et al., A-30581 (July 16, 1968)

John C. Chapman et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, Jan. 18, 1972; no appeal.

U.S. v. Charlestone Stone Products, Inc., 9 IBLA 94 (1973)

Charlestone Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, Nov. 7, 1974 (opinion); aff'd & remanded, 553 F.2d 1209 (9th Cir. 1977); rev'd & remanded, 436 U.S. 604 (1978), dismissed with prejudice, Jan. 25, 1982.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, Jan. 9, 1962; no appeal.

Nick Chournos et al. v. U.S. et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd, 335 F.2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, Apr. 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd, Oct. 9, 1974; rehearing denied, Jan. 13, 1975; cert. denied, Apr. 21, 1975.

U.S. v. J. R. Clements, A-27751 (Dec. 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, Jan. 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, Dec. 6, 1971; appeal withdrawn, Mar. 10, 1972.

U.S. v. Alfred Coleman, A-28557 (Mar. 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, Feb. 25, 1965 (opinion); remanded, 363 F.2d 190 (9th Cir. 1966); aff'd, 379 F.2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd, 405 F.2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Or. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Graham J. Corns, 53 IBLA 5 (1981)

Graham J. Corns v. Secretary of the Interior, Civil No. 81-293, E.D. Cal. Suit pending.

U.S. v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alaska. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEG, D. Ariz. Judgment for defendant; aff'd, July 16, 1980.

U.S. v. Alvis F. Denison et al., 71 I.D. 144 (1964); 76 I.D. 233 (1969)

Marie W. Denison, Individ. & as Executrix of the Estate of Alvis F. Denison, Deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, Jan. 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, Jan. 31, 1972; aff'd, Feb. 1, 1974; cert. denied, Oct. 15, 1974.

U.S. v. J. S. Devenny, A-30289 (Aug. 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (Apr. 28, 1965); 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, Sept. 10, 1969; dec. of BLM dated Jan. 16, 1970, aff'd by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas S. Kleppe, Secretary of the Interior, Curtis Berklund, Dir. of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, Feb. 9, 1977; no appeal.

U.S. v. Francis Dlouhy et al., A-27668 (Sept. 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, Nov. 28, 1960.

Suits for Judicial Review

U.S. v. The Dredge Corp., A-28022 (Dec. 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; judgment for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers C. B. Morton et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, Feb. 12, 1974.

U.S. v. The Dredge Corp., 54 IBLA 281 (1981)

The Dredge Corp. v. James Watt et al., Civil No. CV-LV-81-504 HEC, D. Nev. Suit pending.

U.S. v. Dunbar Stone Co., 56 IBLA 61 (1981)

Dunbar Stone Co. v. Dept. of the Interior, James G. Watt, et al., Civil No. 1811271-331, D. Ariz. Suit pending.

U.S. v. Maurice Duval et al., 1 IBLA 103 (1970)

Maurice Duval et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Or. Dismissed, 347 F. Supp. 501 (1972); aff'd, Dec. 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, Jan. 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, Nov. 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974);
Petition for review granted by Order of Oct. 30, 1975

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, Dec. 5, 1958 (opinion); aff'd, 271 F.2d 836 (1959); no petition.

U.S. v. Andrew L. Freese II, 37 IBLA 7 (1978)

Andrew L. Freese II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, Aug. 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S. et al., Civil No. 78-0314, D. Colo. Dismissed, Oct. 24, 1978, no appeal.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd, 405 F.2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864
(Sept. 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, Oct. 6, 1969; no appeal.

U.S. v. Golden Grigg et al., 19 IBLA 379, 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Judgment for defendant, Nov. 6, 1979; appeal filed, Jan. 3, 1980.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, Sept. 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Judgment for defendant, Sept. 2, 1976; aff'd, 590 F.2d 852 (10th Cir. 1979).

U.S. v. Urban Harenberg et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

Suits for Judicial Review

U.S. v. Richard P. Haskins, A-30737 (Dec. 19, 1966);
3 IBLA 77 (1971); 59 IBLA 1, 88 I.D. 925 (1981)

Richard P. Haskins for Himself & as Adm'r of The Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, Apr. 15, 1968; remanded to the Dir., Bureau of Land Management for an exercise of discretion, Oct. 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd & remanded for further proceedings, Oct. 25, 1974; no petition; 505 F.2d 246 (9th Cir. 1974).

Richard P. Haskins v. James Watt, Civil No. 82-2112 CBM (JRX), C.D. Cal. Suit pending.

U.S. v. Gerald D. Heden et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Or. Dismissed, Aug. 4, 1977; aff'd, Mar. 19, 1980.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd & remanded for further proceedings, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, Oct. 6, 1970.

U.S. v. Joseph R. & Aletha Henri, 46 IBLA 221 (1980)

Joseph R. & Aletha Henri v. Cecil D. Andrus, Secretary of the Interior, Interior Board of Land Appeals, Frederick Fishman, Douglas E. Henriques & Joan B. Thompson, Members of the IBLA, et al., Civil No. A80-124 Civ, D. Alaska. Suit pending.

U.S. v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al. v. Stewart L. Udall et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd, 350 F.2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (Oct. 24, 1967)

Taylor T. Hicks et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ. 1202 Pct., D. Ariz. Judgment for defendant, Mar. 26, 1970.

U.S. v. Ernest Higbee et al., A-31063 (Apr. 1, 1970)

Ernest Higbee et al. v. Rogers C. B. Morton et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, Sept. 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, Dec. 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 8 IBLA 407, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd, 549 F.2d 622 (9th Cir. 1977); petition for cert. filed, June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235, 79 I.D. 117 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alaska. Judgment for defendant, Feb. 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd, 542 F.2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Or. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Leroy S. Johnson et al., 39 IBLA 337 (1979)

Leroy S. Johnson, Joseph I. Barlow, Frederick Merrill Jessop, Daniel Barlow, Edson P. Jessop, Fred M. Jessop, Dan C. Jessop & Samuel S. Barlow v. U.S., Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-0486, D. Utah. Suit pending.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)
See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (Oct. 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, Nov. 21, 1967; no appeal.

U.S. v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Robert N. Johnson et al. & Thelma A. Johnson as Individ. & as Executrix of Nolan F. Fultz Estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (Dec. 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, Oct. 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, Jan. 7, 1977.

Suits for Judicial Review

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912
(May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, Nov. 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298
(1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton et al., Civil No. 2155, D. Mont. Dismissed with prejudice, Jan. 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall et al., Civil No. 1864, D. Nev. Judgment for defendant, Jan. 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (Mar. 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Or. Judgment for defendant, Feb. 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, Sept. 24, 1974; no appeal.

U.S. v. Lost Polack Mining Ass'n, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, Oct. 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Ass'n (Intervenor), 2 IBLA 64, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 15, 1976; petition for reconsideration denied, Aug. 17, 1977; aff'd, July 10, 1980; rehearing en banc denied, Oct. 17, 1980; cert. denied, Mar. 23, 1981.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21, 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, Deceased v. John S. Boyles, Dist. Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, Nov. 4, 1977; aff'd 628 F.2d 1185 (9th Cir. 1980); cert. denied, Mar. 23, 1981.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964); 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall et al., Civil No. 116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd & remanded, 408 F.2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, Aug. 13, 1969.

U.S. v. Edward T. McHenry et al., 43 IBLA 122 (1979)

Edward T. & Ruth E. McHenry v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Civil No. A79-394 CIV, D. Alaska. Suit pending.

U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, Apr. 3, 1973.

U.S. v. Mary A. Matthey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, Nov. 16, 1966; rev'd & remanded, 403 F.2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, Dec. 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969); 32 IBLA 46 (1977).

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd in part & rev'd & remanded in part, 534 F.2d 860 (9th Cir. 1976); no petition.

Frank & Wanita Melluzzo v. Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-282 PHX, CAM, D. Ariz. Judgment for defendant, May 20, 1980.

Suits for Judicial Review

U.S. v. Frank & Wanita Melluzzo et al., 76 I.D. 181 (1969); reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co. et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, Dec. 8, 1971; dismissed, Feb. 4, 1974.

U.S. v. Frank & Wanita Melluzzo, 38 IBLA 214, 85 I.D. 441 (1978)

Frank & Wanita Melluzzo v. U.S. & James Watt, Secretary of the Interior, Civil No. 81-607 PHX CAM, D. Ariz. Suit pending.

U.S. v. Mineral Ventures, Ltd., 14 IBLA 82, 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Or. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, Sept. 9, 1977.

U.S. v. G. Patrick Morris et al., 19 IBLA 350, 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd in part, rev'd in part, Dec. 20, 1976; rev'd, 593 F.2d 851 (9th Cir. 1978). Dismissed with prejudice, June 23, 1980; motion to vacate denied Oct. 9, 1980; appeal filed Dec. 3, 1980.

U.S. v. Ernest Evon Moseley, A-30971 (Dec. 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (Jan. 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, Feb. 19, 1963 (opinion); aff'd, 326 F.2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, Mar. 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, Feb. 24, 1976.

U.S. v. Leonard F. Nelson, 8 IBLA 294 (1972); (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton et al., Civil No. A-3-73, D. Alaska. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd & remanded, Jan. 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, Nov. 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, Jan. 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D.N.M. Dismissed, Oct. 5, 1973; rev'd & remanded, 501 F.2d 1389 (10th Cir. 1974); remanded to the Dept. for further proceedings, Jan. 30, 1975; motion to compel compliance denied, July 24, 1978.

U.S. v. Lloyd O'Callaghan, Sr., et al., 8 IBLA 324, 79 I.D. 689 (1972); U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975); 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individ. & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton et al., Civil No. 73-129-S, S.D. Cal. Aff'd in part & remanded, May 14, 1974. Judgment for defendant, May 16, 1978; aff'd, May 8, 1980.

U.S. v. Wilma L. Oldaker, A-30378 (Aug. 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alaska. Stipulated dismissal with prejudice, Mar. 3, 1967; no appeal.

U.S. v. J. R. Osborne et al., A-31030, 77 I.D. 83 (1970), 28 IBLA 13 (1976); reconsideration denied by Order dated Jan. 4, 1977

J. R. Osborne, Individ. & on behalf of R. R. Borders et al. v. Rogers C. B. Morton et al., Civil No. 1564, D. Nev. Judgment for defendant, Mar. 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, Feb. 22, 1974; remanded to the Dept. with orders to reexamine the issues, Dec. 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Ralph Page et al., 19 IBLA 255 (1975); 43 IBLA 390 (1979)

Forest O. Garrigus, Jr., Forest O. Garrigus III, Ralph Page, Leona Aslett v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-314, D. Or. Suit pending.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388, 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV 77-5055, D.S.D. Dismissed by plaintiff, Dec. 8, 1980; no appeal.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, D.S.D. Judgment for defendant, Dec. 26, 1978; aff'd, Feb. 12, 1980; cert. denied, Sept. 4, 1980.

U.S. v. Paul C. Poncia et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, Sept. 28, 1976.

U.S. v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Hal W. Eldridge et al. v. Secretary of the Interior, Civil No. 64-353, D. Or. Judgment for defendant, Dec. 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin et al., A-27495 (Apr. 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered, July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, Jan. 15, 1960; rev'd & remanded, 284 F.2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, Mar. 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (Aug. 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F.2d 615 (1965); judgment for defendant, Jan. 4, 1966; per curiam dec., remanded for transfer to Dist. Ct., Or. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Or. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd, 410 F.2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam et al., 1 IBLA 143 (1970)

William D. Pulliam et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, Mar. 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Or. Dismissed, May 1, 1975; aff'd, Mar. 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, Feb. 11, 1975; aff'd, Oct. 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (Sept. 29, 1965)

Cecil R. Reed v. Stewart L. Udall et al., Civil No. 1784, D. Nev. Judgment for defendant, Dec. 19, 1967; aff'd, 416 F.2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, Feb. 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036; A-31133 (Mar. 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, Oct. 22, 1971; appeal dismissed, Apr. 18, 1972.

U.S. v. R. E. & Barbara J. Rodgers, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-119, D. Or. Judgment for defendant, Mar. 26, 1980; amended judgment Oct. 2, 1980; appeal filed Nov. 12, 1980.

U.S. v. Ludwig G. Rosenkranz, 46 IBLA 109 (1980)

Ludwig G. Rosenkranz v. Forest Service et al., Civil No. CIV-80-951-PHX-WEC, D. Ariz. Judgment for defendant, Feb. 10, 1982; appeal filed Mar. 10, 1982.

U.S. v. Alice W. Rouse, 56 IBLA 36 (1981)

Alice W. Rouse v. Dept. of the Interior & James Watt, Civil No. 81-1302-S(I), S.D. Cal. Suit pending.

Suits for Judicial Review

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc., et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. Dan S. Russell, 40 IBLA 309 (1979)

Dan S. Russell v. John R. McGuire, Individ. & as Chief, Forest Service, DOA, Bob Berglund, Individ. & as Secretary of Agriculture, Frank Gregg, Individ. & as Dir., BLM, Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 79-949, D. Or. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallyely, Jr., & William J. Vallyely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

Edwin R. Saurers et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley et al., A-28127 (Jan. 28, 1960)

Charles L. Seeley et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, Dec. 16, 1964.

U.S. v. James S. Sette, 46 IBLA 335 (1980)

James S. Sette v. The Secretary of the Interior, Civil No. S-80-593MLS, E.D. Cal. Suit pending.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group

U.S. v. Silverton Mining & Milling Co., 1 IBLA 15 (Sept. 23, 1970)

Multiple Use, Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd, 504 F.2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (Feb. 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, Dec. 7, 1961; no appeal.

U.S. v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'x of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd, 405 F.2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., A-31034, 77 I.D. 41 (1970)

Southern Pacific Co. et al. v. Rogers C. B. Morton et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, Nov. 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, A-31088, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, Oct. 27, 1972.

U.S. v. Frank R. Sullivan, 9 IBLA 278 (1973)

Robert L. Mendenhall v. U.S., Cecil D. Andrus, Secretary of the Interior, & Edward F. Spange, State Dir. Nevada, BLM, Civil No. CV-R-80-146ECR, D. Nev. Suit pending.

U.S. v. Elmer H. Swanson, 14 IBLA 158, 81 I.D. 14 (1974); 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, Dec. 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

U.S. v. Tempest Mining Co., 40 IBLA 297 (1979)

Tempest Mining Corp. v. U.S., Dept. of Interior, Bureau of Land Management & Secretary of the Interior, Civil No. CIV 79-1103, D. Idaho. Suit pending.

U.S. v. C. Fred Underwood et al., 22 IBLA 62 (1975); (Amended Decision), 22 IBLA 70 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Judgment for defendant, June 23, 1977; aff'd, Mar. 19, 1980.

Suits for Judicial Review

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The Wilderness Society, McKenzie Flyfishers, The Obsidians, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-0296. Dismissed, May 30, 1979.

U.S. v. U.S. Silica Corp. et al., A-30400 (Aug. 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, Sept. 26, 1969; no appeal.

U.S. v. Utah Internat'l, Inc., 45 IBLA 73 (1980)

Utah Internat'l v. Cecil Andrus, Secretary of the Interior, Civil No. C80-068, D. Wyo. Judgment for defendant, Aug. 14, 1981.

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Alfred N. Verrue v. U.S. et al., Civil No. 6898 Phx., D. Ariz. Rev'd & remanded, Dec. 29, 1970; aff'd, 457 F.2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (Apr. 24, 1966); A-30659 (Oct. 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Or. Judgment for defendant, Mar. 17, 1971; aff'd, 498 F.2d 288 (9th Cir. 1974); cert. denied, Nov. 18, 1974.

U.S. v. H. B. Webb, 1 IBLA 67 (1970)

U.S. v. Hiram Webb, Civil No. _____, D. Ariz. Judgment for plaintiff. Vacated & remanded, 655 F.2d 977 (9th Cir. 1981).

U.S. v. Oscar W. Weiss et al., A-30809 (Sept. 14, 1967); 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, Jan. 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (Jan. 8, 1968); A-30805 (Supp.) (Apr. 25, 1969); A-30805 (Supp. II) (Nov. 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, Dec. 12, 1968; remanded to Bureau of Land Management. Time extended to Nov. 1, 1970, to comply with requirements of Supp. II. Judgment for defendant, Dec. 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, Jan. 6, 1967; aff'd, 404 F.2d 334 (9th Cir. 1968); no petition.

U.S. v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 37 (1980)

Cesar S. Hernandez v. James Watt, Secretary of Interior, & Thom Coston, Regional Forester, Region I, DOA, Civil No. 81-35M, D. Mont. Suit pending.

U.S. v. Milton Wichner, 35 IBLA 240 (1978)

Milton Wichner v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Dir., BLM, Edward L. Haste, State Dir. (Cal.), BLM, William T. Dresser Forest Super. of the Angeles Nat'l Forest, & U.S., Civil No. CV 78-2804, C.D. Cal. Suit pending.

U.S. v. Frank W. Winegar et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Judgment for plaintiff, Jan. 17, 1977; aff'd, Jan. 25, 1979.

U.S. v. Rodney Wood et al., A-30697 (May 31, 1967)

Rodney Wood et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, Nov. 7, 1967; amended complaint filed; judgment for defendant, Mar. 27, 1969; no appeal.

U.S. v. Jon Zimmers & Claire Kelly, 44 IBLA 142 (1979)

Jon F. Zimmers v. Cecil D. Andrus, Secretary of the Interior, Civil No. S-80-140 LKK, E.D. Cal. Suit pending.

U.S. v. Elodymae Zwang; U.S. v. Darrell Zwang, 26 IBLA 41, 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus, Secretary of the Interior, Civil No. 77-1431 R, D. Cal. Judgment for plaintiff, Aug. 20, 1979.

U.S. v. Merle I. Zweifel et al., 16 IBLA 74 (1974)

Walter H. Burkhardt et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with A. F. Anderson et al. v. Rogers C. B. Morton et al., Civil No. C74-151, D. Wyo. for purposes of appeal by Order of Nov. 19, 1975. Dismissed, Nov. 28, 1975.

U.S. v. Merle I. Zweifel et al., 11 IBLA 53, 80 I.D. 323 (1973)

Merle I. Zweifel et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, Oct. 31, 1973.

Kenneth Roberts et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308, D. Colo. Dismissed with prejudice, 389 F. Supp. 87 (1975); aff'd, 549 F.2d 158 (10th Cir. 1977).

Suits for Judicial Review

United Technical Industries, Inc., A-29406 (Apr. 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (Sept. 21, 1966)

Paul E. Unruh v. Udall et al., Civil No. 1894-N, D. Nev. Judgment for defendant June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, Nov. 3, 1972; aff'd, Sept. 20, 1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe, in his official capacity as Secretary of the Interior, Civil No. C-76-136, D. Utah. Suit pending.

Utah Wilderness Ass'n et al., IBLA 81-648 (still pending)

Utah Wilderness Ass'n et al. v. James G. Watt et al., Civil No. C81-0903A, C.D. Utah. Suit pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by Order, Aug. 8, 1973, Petition for reconsideration denied by Order, May 29, 1975

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior et al., Civil No. A75-223 CIV, D. Alaska. Stipulated dismissal, Mar. 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, Apr. 18, 1957; no appeal.

Robert J. Verchota, 64 IBLA 23 (1982)

Robert J. Verchota v. James Watt, Secretary of the Interior, et al., Civil No. CV-LV 82-349 HEC, D. Nev. Suit pending.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96, 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior & Phillip Brendale, Civil No. C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton et al., Civil No. 72-C-428, D. Wis. Dismissed, 380 F. Supp. 205 (1974); rev'd, Sept. 29, 1975; no petition.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165, 87 I.D. 327 (1980)

Virginia Iron, Coal & Coke Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-0245-B, W.D. Va. Suit pending.

Eleanor E. Volkmar, IBLA 80-628; April Adamick, IBLA 80-727, 784; Joseph J. Adamick, IBLA 80-766; Janice Hayes, IBLA 80-767, 785; Kathleen Jo Adamick Price, IBLA 80-768; Janine Adamick, IBLA 80-769. Decs. set aside & cases remanded by Order dated Aug. 20, 1980

Joseph, Janine, & April Adamick, Janice Hayes & Kathleen Jo Price v. James G. Watt, Secretary of the Interior, et al., Civil No. CV-LV 81-586 RDF, D. Nev. Suit pending.

Burt A. Wackerli et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed, Mar. 17, 1971; judgment for plaintiff, Feb. 28, 1975.

Estate of Amelia Keyes Abbot Viramontes Walker, IA-1339 (Apr. 5, 1966)

Earlene Ida Abbott Simons v. Udall et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (Apr. 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd, 409 F.2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 4 IBIA 97, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. C75-175, D. Wyo. Dismissed, Jan. 1, 1976.

Wasatch Development Co. et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, Oct. 26, 1959; satisfaction of judgment entered, Feb. 9, 1960.

D. R. Weedon, Jr., et al., 51 IBLA 378 (1980)

R. D. Weedon, Jr. v. James G. Watt, Secretary of the Interior, et al., Civil No. 81-0749. Suit pending.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83, 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwersee v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (Feb. 25, 1963); Duncan Miller, A-29231 (Feb. 5, 1963)

Cecil H. Phillips et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, Feb. 25, 1964; no appeal.

The West Virginia Highlands Conservancy, 3 IB SMA 154, 88 I.D. 570 (1981)

West Virginia Highlands Conservancy v. James Watt et al., Civil No. 81-0037-C(H), N.D. W. Va. Suit pending.

Western Nuclear, Inc., 35 IBLA 146, 85 I.D. 129 (1978)

Western Nuclear, Inc., a Del. Corp., authorized & doing business in the State of Wyo. v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C78-129, D. Wyo. Judgment for defendant, 475 F. Supp. 654 (D. Wyo. 1979); appeal filed Nov. 28, 1979.

Minnie F. Wharton, John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyl, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, 4 IBLA 287, 79 I.D. 6 (1972)

U.S. & Rogers C. B. Morton, Secretary of the Interior v. Minnie E. & John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyle, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, Civil No. 70-106, D. Or. Judgment for defendant, Feb. 26, 1973; reconsideration denied, June 4, 1973; rev'd & remanded, 514 F.2d 406 (9th Cir. 1975); no petition.

Richard Wheeler, Jr., 34 IBLA 359 (1978)

Richard Wheeler, Jr. v. The Dept. of Interior & Cecil Andrus, Secretary of the Interior, Civil No. CIV78-0750 T, W.D. Okla. Suit pending.

White Winter Coals, Inc., 1 IB SMA 305, 86 I.D. 675 (1979)

White Winter Coals, Inc. v. Dept. of the Interior, Civil No. 3-80-3. Suit pending.

Estate of John P. Whitetail, IA-T-23 (Apr. 17, 1970)

Doris Ann Whitetail Parker et al. v. John Pappan et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, Aug. 17, 1973; no appeal.

Estate of Hiemstennie (Maggie) Whiz Abbott, 2 IBIA 53, 80 I.D. 617 (1973); 4 IBIA 12, 82 I.D. 169 (1975); reconsideration denied, 4 IBIA 79 (1975)

Doris Whiz Burkybile v. Alvis Smith, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, et al., Civil No. C-75-190, E.D. Wash. Judgment for defendant, Jan. 21, 1977; no appeal.

Buck Willcoxson, A-27402; A-27403 (Dec. 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D.N.M. Motion of plaintiff to dismiss case without prejudice granted, Dec. 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson et al., Civil No. 1492-59.

Buck Willcoxson v. U.S., Civil No. 972-59.

For above cases:
Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, Aug. 3, 1961; aff'd, 313 F.2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

Estate of Joseph Willessi, 8 IBIA 295, 88 I.D. 561 (1981)

Leo Williams v. James Watt, Secretary of the Interior, et al., Civil No. C81-700, W.D. Wash. Suit pending.

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co. et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F.2d 847 (1961); no appeal.

William A. Smith Contracting Co. v. U.S., Ct. Cl. No. 279-59. Judgment for defendant, 292 F.2d 854 (1961); no appeal.

Suits for Judicial Review

William F. Klingensmith, Inc., IBCA-717-5-68;
IBCA-734-10-68 (May 4, 1971)

William F. Klingensmith, Inc. v. U.S., Civil
No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil
No. 1288-71.

For above cases:

Actions consolidated & transferred to Court
of Claims, Jan. 24, 1972; Ct. Cl. No. 28-72.
Dismissed, Nov. 23, 1973.

David L. Williams, A-29858 (Feb. 12, 1963)

Richard L. & Jean S. Hatter, Gary Linn
Dusenberry, Jere D. Anderson, & Henry P.
Carley d/b/a Chad Enterprise, a Joint Venture
v. U.S., Civil No. S74-205, E.D. Cal. Judg-
ment for defendant, Aug. 8, 1975.

Wilson Farms Coal Co., 2 IBSMA 118, 87 I.D. 245
(1980)

Wilson Farms Coal Co. v. Cecil D. Andrus,
Secretary of the Interior, Civil No. 80-
150, E.D. Ky. Suit pending.

Harry H. Wilson, 35 IBLA 349 (1978)

Harry H. Wilson v. U.S., & Cecil Andrus,
Secretary of the Interior, Civil No. A78-225
CIV, D. Alaska. Suit pending.

Estate of Louise Wilson, IA-1380 (Mar. 1, 1966)

Charles W. Heffelman v. Stewart L. Udall,
Civil No. 6402, N.D. Okla. Dismissed,
June 16, 1966; aff'd, 378 F.2d 109 (10th Cir.
1967); cert. denied, 389 U.S. 926 (1967).

Frank Winegar, Shell Oil Co. & D. A. Shale Inc.,
74 I.D. 161 (1967)

Shell Oil Co. et al. v. Udall et al., Civil
No. 67-C-321, D. Colo. Judgment for plain-
tiff, Sept. 18, 1967; no appeal.

Joseph A. Winkler, 24 IBLA 380 (1976)

Joseph A. Winkler v. Thomas Kleppe, Secretary of
the Interior, Civil No. C76-176, D. Utah. Judg-
ment for defendant, June 20, 1977; vacated &
remanded, 594 F.2d 775 (10th Cir. 1979); 494 F.
Supp. 947 (D. Wyo. 1980); rev'd & remanded,
614 F.2d 707 (10th Cir. 1980).

Joseph A. Winkler v. Marlis E. Smith Trust et
al., Civil No. C81-333, D. Wyo. Suit pending.

Winston Ford Co., Inc. (Petitioner) v. Office of Sur-
face Mining Reclamation & Enforcement (Respondent),
1 IBSMA 324 (1979)

Winston Ford Co. v. Cecil D. Andrus, Civil
No. 80-10, E.D. Ky. Suit pending.

Appeal of Wisenak, Inc., 1 ANCAB 157, 83 I.D. 496
(1976)

Wisenak, Inc., an Alaska Corp. v. Thomas S.
Kleppe, Individ. & as Secretary of the Interior
& the U.S., Civil No. F76-38 Civ., D. Alaska.
Remanded to Dept. for further proceedings,
July 9, 1979.

W. L. Ridge Construction Co., IBCA-80 (Nov. 30,
1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60.
Suit dismissed, Oct. 1, 1963.

Admin. Appeal of Robert B. Wooding et al. v. Comm'r,
Bureau of Indian Affairs, 4 IBIA 255 (1975); recon-
sideration denied, 5 IBIA 9 (1976)

Robert B. Wooding, d/b/a Associated Investors,
& Auburn Enterprises, Inc. v. Thomas Kleppe,
Secretary of the Interior, et al., Civil
No. C76-86T, W.D. Wash. Dismissed for failure
to prosecute, June 3, 1977.

Woods Petroleum Corp. et al., 55 IBLA 348 (1981)

Geosearch, Inc., & Herbert Maslan v. James G.
Watt et al., Civil No. C-81-276, D. Wyo.
Suit pending.

Burton D. Morgan, Fred L. Engle, d/b/a/
Resource Service Co. v. James G. Watt et al.,
Civil No. C-81-279, D. Wyo. Suit pending.

Woods Petroleum Corp. et al., William Ralph Stroble
et al., 12 IBLA 247 (1973)

Duvels, Inc., West Park Internat'l, Inc.,
George H. Frandsen, Paul P. Dyreng, R. Morgan
Dyreng, Stephen B. Nadauld, John B. Peacock &
Lori M. Free v. Kent Frizzell, Acting Secre-
tary of the Interior, Civil No. C-75-175,
D. Utah. Judgment for defendant, July 6,
1976; aff'd, Feb. 23, 1978; no petition.

Mountain States Resources v. Rogers C. B.
Morton, Individ. & as Secretary of the
Interior, Civil No. C-75-238, D. Utah.
Dismissed for failure to prosecute,
Nov. 29, 1978. No appeal.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927,
65 I.D. 436 (1958)

Thomas J. Huff, Admin. with Will annexed of the
Estate of Wook-Kah-Nah, Deceased, Comanche En-
rolled Restricted Indian No. 1927 v. Jane Asenap,
Wilfred Tabbytite, J. R. Graves, Examiner of In-
heritance, Bureau of Indian Affairs, Dept. of the
Interior & Earl R. Wiseman, Dist. Dir. of Internal
Revenue, Civil No. 8281, W.D. Okla. Dismissed as
to the Examiner of Inheritance; plaintiff dis-
missed suit without prejudice as to the other
defendants.

Thomas J. Huff, Admin. with will annexed of the
Estate of Wook-Kah-Nah v. Stewart L. Udall,
Civil No. 2595-60. Judgment for defendant,
June 5, 1962; remanded, 312 F.2d 358 (1962).

Robert L. Wright, Shell Oil Co., 60 IBLA 142
(1981)

Shell Oil Co. v. Dept. of the Interior,
Civil No. 82-283, D. Colo. Suit pending.

State of Wyoming, 27 IBLA 137, 83 I.D. 364 (1976)

State of Wyoming, Albert E. King, Comm'r of
Public Lands v. Cecil D. Andrus, Secretary of
the Interior, Civil No. C77-034K, D. Wyo.
Judgment for defendant, Sept. 8, 1977; aff'd,
July 18, 1979.

Haruyuki Yamane et al., 19 IBLA 320 (1975)

C. Burglin, Dennis Krize, Mark & Kenneth
Ringstad, Lloyd Burgess, M. E. Anderson,
William Ackess, John J. & William D. Sexton,
J. R. & June L. S. Beck, Alexander Miller,
Wally Burnett, Sr., Wallace & Donald Burnett,
Earnest Carter, Mary L. Carie & Harayuki
Yamane v. The Secretary of the Interior,
Stanley Hathaway, et al., Civil No. A75-113
CIV. D. Alaska. Consolidated with Civil
No. A75-232. Judgment for defendant, Dec. 29,
1976; aff'd, Aug. 18, 1978.

Young Associates, Inc., IBCA-557-4-66 (Dec. 4, 1968)

Young Associates, Inc. v. U.S., Ct. Cl. 787-71.
Judgment for defendant, Jan. 18, 1973.

Estate of Asmakt Yumpquitat (Millie Sampson),
8 IBIA 1 (1980)

Anita Sampson Lewis v. Cecil D. Andrus,
Secretary of the Interior, Civil No. C-
80-117, E.D. Wash. Suit pending.

Zapata Coal Corp., 2 IBSMA 9, 87 I.D. 11 (1980)

Zapata Coal Corp. v. Cecil D. Andrus,
Civil No. 80-2058, S.W. W. Va. Suit
pending.

George W. Zarak et al., Cardinal Petroleum Co.,
4 IBLA 82 (1971)

Tony Rice, George W. Zarak, Arlene Zarak,
William J. Zarak, Jr. & Darlene Zarak v.
Rogers C. B. Morton et al., Civil No. 1127,
D.N.D. Judgment for defendant, 348 F. Supp.
254 (1972); aff'd, 479 F.2d 58 (8th Cir.
1973); cert. denied, 414 U.S. 858 (1973).

Zeigler Coal Co., 81 I.D. 729 (1974)

Internat'l Union of United Mine Workers of
America v. Stanley K. Hathaway, Secretary of
the Interior, No. 75-1003, U.S. Ct. of Appeals,
D.C. Cir. Rev'd & remanded to the Board for
further proceedings, 532 F.2d 1403 (1976).

Zeigler Coal Co., 82 I.D. 36 (1975)

Zeigler Coal Co. v. Kent Frizzell, Acting
Secretary of the Interior, No. 75-1139,
U.S. Ct. of Appeals, D.C. Cir. Judgment
for defendant, 536 F.2d 398 (1976).

Harry A. Zuckerman et al., 41 IBLA 372 (1979)

Harry Zuckerman & Mark M. Collins v.
Benjamin Civiletti, Attorney General &
R. E. Thompson, U.S. Attorney on behalf
of Cecil Andrus, Secretary of the Interior,
Civil No. CIV-79-815-M, D.N.M. Aff'd,
Jan. 13, 1981; appeal filed, Mar. 16, 1981.

Jack Zuckerman et al., 56 IBLA 193 (1981)

Geosearch, Inc., & Elizabeth H. Carter v.
James Watt et al., Civil No. C81-0306
D. Wyo. Suit pending.

Jack Zuckerman & Fred L. Engle, d/b/a
Resource Service Co. v. James Watt et al.,
Civil No. C81-0307. Suit pending.

Elodymae Zwang et al., A-30201 (Feb. 3, 1965)

Darrell & Elodymae Zwang v. Stewart L. Udall,
Civil No. 65-716-EC, S.D. Cal. Judgment for
defendant, Feb. 23, 1966; aff'd, 371 F.2d 634
(9th Cir. 1967); no petition.

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TABLES OF U.S. STATUTES AT LARGE, REVISED STATUTES, AND U.S. CODES

(A) United States Statutes

9 STAT:

page 395 -----12 IBIA 80, 90 I.D. 521 (1983)
 72 IBLA 218 (Apr. 25, 1983)
 922 ----- IBCA-1606-7-82 (Oct. 19, 1983)

10 STAT:

page 304 -----72 IBLA 197 (Apr. 19, 1983)
 701 -----72 IBLA 197 (Apr. 19, 1983)

11 STAT:

page 294 -----72 IBLA 197 (Apr. 19, 1983)

12 STAT:

page 85 -----72 IBLA 197 (Apr. 19, 1983)
 392 -----75 IBLA 236 (Aug. 24, 1983)

14 STAT:

page 85 -----76 IBLA 301, 90 I.D. 464 (1983)
 239 -----72 IBLA 261, 90 I.D. 189 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 242 -----76 IBLA 349 (Oct. 24, 1983)
 251 -----76 IBLA 301, 90 I.D. 464 (1983)
 76 IBLA 349 (Oct. 24, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 253 -----74 IBLA 275 (July 25, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 292 -----72 IBLA 197 (Apr. 19, 1983)
 544 -----72 IBLA 197 (Apr. 19, 1983)

15 STAT:

page 67 -----76 IBLA 301, 90 I.D. 464 (1983)
 539 -----74 IBLA 295 (July 27, 1983)
 635 -----12 IBIA 49, 90 I.D. 474 (1983)
 667 -----12 IBIA 49, 90 I.D. 474 (1983)

16 STAT:

page 94 -----72 IBLA 261, 90 I.D. 189 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 217 -----77 IBLA 80 (Nov. 9, 1983)
 218 -----77 IBLA 80 (Nov. 9, 1983)

17 STAT:

page 91 -----75 IBLA 16, 90 I.D. 352 (1983)
 76 IBLA 301, 90 I.D. 464 (1983)
 77 IBLA 261 (Nov. 30, 1983)
 94 -----75 IBLA 16, 90 I.D. 352 (1983)
 378 -----72 IBLA 197 (Apr. 19, 1983)
 649 -----72 IBLA 197 (Apr. 19, 1983)

19 STAT:

page 377 -----74 IBLA 239 (July 19, 1983)

20 STAT:

page 89 -----71 IBLA 178 (Mar. 10, 1983)
 71 IBLA 268 (Mar. 22, 1983)

22 STAT:

page 31 -----77 IBLA 160 (Nov. 16, 1983)

23 STAT:

page 24 -----74 IBLA 295 (July 27, 1983)
 77 IBLA 130 (Nov. 15, 1983)
 101 -----72 IBLA 62 (Apr. 12, 1983)

26 STAT:

page 1095 -----74 IBLA 295 (July 27, 1983)
 1096 -----74 IBLA 239 (July 19, 1983)
 1101 -----74 IBLA 249 (July 22, 1983)

29 STAT:

page 622 -----72 IBLA 197 (Apr. 19, 1983)

30 STAT:

page 11 -----70 IBLA 46 (Jan. 10, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)
 32 -----71 IBLA 268 (Mar. 22, 1983)
 36 -----70 IBLA 46 (Jan. 10, 1983)
 71 IBLA 268 (Mar. 22, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 404 -----77 IBLA 80 (Nov. 9, 1983)
 409 -----77 IBLA 347 (Dec. 5, 1983)
 413 -----70 IBLA 171 (Jan. 20, 1983)
 77 IBLA 20 (Oct. 31, 1983)
 597 -----72 IBLA 197 (Apr. 19, 1983)
 990 -----12 IBIA 49, 90 I.D. 474 (1983)

31 STAT:

page 790 -----77 IBLA 80 (Nov. 9, 1983)

32 STAT:

page 388 -----70 IBLA 264, 90 I.D. 10 (1983)
 1028 -----74 IBLA 295 (July 27, 1983)
 77 IBLA 347 (Dec. 5, 1983)

33 STAT:

page 65 -----12 IBIA 49, 90 I.D. 474 (1983)
 628 -----77 IBLA 395 (Dec. 9, 1983)
 1264 -----70 IBLA 46 (Jan. 10, 1983)
 72 IBLA 197 (Apr. 19, 1983)
 75 IBLA 388 (Sept. 2, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)

34 STAT:

page 197 -----11 IBIA 51 (Feb. 9, 1983)
 77 IBLA 130 (Nov. 15, 1983)
 77 IBLA 316 (Nov. 30, 1983)
 225 -----70 IBLA 264, 90 I.D. 10 (1983)
 73 IBLA 16 (May 5, 1983)
 75 IBLA 16, 90 I.D. 352 (1983)
 607 -----70 IBLA 264, 90 I.D. 10 (1983)
 76 IBLA 276 (Oct. 18, 1983)

35 STAT:

page 571 -----72 IBLA 261, 90 I.D. 189 (1983)

36 STAT:

page 847 -----70 IBLA 264, 90 I.D. 10 (1983)
 76 IBLA 264 (Oct. 18, 1983)
 76 IBLA 370 (Oct. 25, 1983)
 77 IBLA 51 (Nov. 7, 1983)
 963 -----72 IBLA 110 (Apr. 14, 1983)

37 STAT:

page 497 -----70 IBLA 264, 90 I.D. 10 (1983)
 1741 -----71 IBLA 19 (Feb. 15, 1983)

39 STAT:

page 218 -----72 IBLA 261, 90 I.D. 189 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 219 -----78 IBLA 46, 90 I.D. 550 (1983)
 862 -----70 IBLA 264, 90 I.D. 10 (1983)
 78 IBLA 155 (Dec. 29, 1983)
 864 -----78 IBLA 155 (Dec. 29, 1983)
 865 -----M-36914 (Supp. II), 90 I.D. 81
 (1983)
 973 -----12 IBIA 49, 90 I.D. 474 (1983)
 1150 -----72 IBLA 110 (Apr. 14, 1983)

40 STAT:

page 1179 -----72 IBLA 261, 90 I.D. 189 (1983)
 1855 -----77 IBLA 347 (Dec. 5, 1983)

41 STAT:

page 437 -----71 IBLA 19 (Feb. 15, 1983)
 71 IBLA 92 (Feb. 24, 1983)
 75 IBLA 328 (Aug. 30, 1983)
 76 IBLA 37 (Sept. 14, 1983)
 76 IBLA 387, 90 I.D. 470 (1983)
 439 -----71 IBLA 92 (Feb. 24, 1983)
 443 -----71 IBLA 39 (Feb. 16, 1983)
 986 -----70 IBLA 264, 90 I.D. 10 (1983)
 1059 -----77 IBLA 347 (Dec. 5, 1983)
 1063 -----77 IBLA 51 (Nov. 7, 1983)

42 STAT:

page 1017 -----75 IBLA 388 (Sept. 2, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)

44 STAT:

page 629 -----11 IBIA 155, 90 I.D. 165 (1983)
 741 -----73 IBLA 16 (May 5, 1983)
 76 IBLA 301, 90 I.D. 464 (1983)

45 STAT:

page 251 -----72 IBLA 110 (Apr. 14, 1983)
 1069 -----IBCA-1606-7-82 (Oct. 19, 1983)
 75 IBLA 89 (Aug. 11, 1983)
 1144 -----70 IBLA 264, 90 I.D. 10 (1983)

46 STAT:

page 257 -----70 IBLA 46 (Jan. 10, 1983)
 75 IBLA 388 (Sept. 2, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)

47 STAT:

page 136 -----70 IBLA 264, 90 I.D. 10 (1983)
 1487 -----76 IBLA 37 (Sept. 14, 1983)
 2453 -----77 IBLA 347 (Dec. 5, 1983)

48 STAT:

page 139 -----74 IBLA 56, 90 I.D. 262 (1983)
 401 -----70 IBLA 254 (Jan. 25, 1983)
 75 IBLA 328 (Aug. 30, 1983)
 984 -----11 IBIA 179 (May 10, 1983)
 985 -----11 IBIA 124 (Mar. 22, 1983)
 1269 -----75 IBLA 44 (Aug. 5, 1983)
 1272 -----73 IBLA 82 (May 18, 1983)

49 STAT:

page 1482 -----76 IBLA 37 (Sept. 14, 1983)
 2026 -----76 IBLA 37 (Sept. 14, 1983)

50 STAT:

page 525 -----70 IBLA 254 (Jan. 25, 1983)
 75 IBLA 44 (Aug. 5, 1983)
 75 IBLA 328 (Aug. 30, 1983)
 874 -----71 IBLA 67 (Feb. 22, 1983)
 72 IBLA 261, 90 I.D. 189 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)

52 STAT:

page 609 -----72 IBLA 373 (May 4, 1983)
 73 IBLA 156 (May 24, 1983)
 74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)
 76 IBLA 20 (Sept. 6, 1983)
 821 -----12 IBIA 49, 90 I.D. 474 (1983)
 1033 -----75 IBLA 44 (Aug. 5, 1983)

53 STAT:

page 753 -----71 IBLA 67 (Feb. 22, 1983)
 1196 -----77 IBLA 137 (Nov. 15, 1983)

55 STAT:

page 1647 -----72 IBLA 52 (Apr. 12, 1983)

59 STAT:

page 467 -----72 IBLA 373 (May 4, 1983)
 73 IBLA 156 (May 24, 1983)
 74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)
 74 IBLA 350 (July 28, 1983)
 76 IBLA 20 (Sept. 6, 1983)

60 STAT:

page 1080 -----70 IBLA 254 (Jan. 25, 1983)
 75 IBLA 328 (Aug. 30, 1983)
 1099 -----72 IBLA 110 (Apr. 14, 1983)

61 STAT:

page 914 -----75 IBLA 290 (Aug. 26, 1983)

62 STAT:

page 17 -----12 IBIA 49, 90 I.D. 474 (1983)
 162 -----70 IBLA 264, 90 I.D. 10 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 289 -----72 IBLA 110 (Apr. 14, 1983)

63 STAT:

page 214 -----73 IBLA 323 (June 7, 1983)
 604 -----70 IBLA 139 (Jan. 14, 1983)
 708 -----70 IBLA 264, 90 I.D. 10 (1983)

64 STAT:

page 967 -----12 IBIA 80, 90 I.D. 521 (1983)

67 STAT:

page 227 -----IBCA-1606-7-82 (Oct. 19, 1983)
 75 IBLA 89 (Aug. 11, 1983)
 589 -----11 IBIA 237 (July 6, 1983)

68 STAT:

page 173 -----76 IBLA 301, 90 I.D. 464 (1983)
 239 -----72 IBLA 373 (May 4, 1983)
 73 IBLA 156 (May 24, 1983)
 74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)

United States Statutes

68 STAT: Continued

page 239: Cont'd 74 IBLA 350 (July 28, 1983)
 76 IBLA 20 (Sept. 6, 1983)
 583 -----72 IBLA 83 (Apr. 13, 1983)
 585 -----72 IBLA 83 (Apr. 13, 1983)
 718 -----11 IBIA 267 (Aug. 8, 1983)

69 STAT:

page 367 -----78 IBLA 46, 90 I.D. 550 (1983)
 369 -----74 IBLA 56, 90 I.D. 262 (1983)
 372 -----78 IBLA 46, 90 I.D. 550 (1983)
 444 -----77 IBLA 347 (Dec. 5, 1983)
 534 -----72 IBLA 197 (Apr. 19, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)
 535 -----72 IBLA 197 (Apr. 19, 1983)
 681 -----71 IBLA 183 (Mar. 10, 1983)

70 STAT:

page 954 -----77 IBLA 130 (Nov. 15, 1983)

71 STAT:

page 623 -----74 IBLA 295 (July 27, 1983)

72 STAT:

page 31 -----71 IBLA 1 (Feb. 9, 1983)
 73 IBLA 56 (May 12, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 77 IBLA 156 (Nov. 16, 1983)
 77 IBLA 160 (Nov. 16, 1983)
 32 -----73 IBLA 56 (May 12, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 339 -----72 IBLA 387 (May 5, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 1701 -----72 IBLA 232 (Apr. 26, 1983)
 73 IBLA 383 (June 15, 1983)

74 STAT:

page 74 -----76 IBLA 212 (Oct. 17, 1983)
 334 -----70 IBLA 46 (Jan. 10, 1983)
 75 IBLA 388 (Sept. 2, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 76 IBLA 353 (Oct. 24, 1983)
 790 -----72 IBLA 39 (Apr. 6, 1983)

75 STAT:

page 318 -----70 IBLA 150 (Jan. 18, 1983)

76 STAT:

page 399 -----72 IBLA 52 (Apr. 12, 1983)
 607 -----75 IBLA 44 (Aug. 5, 1983)
 804 -----71 IBLA 1 (Feb. 9, 1983)
 73 IBLA 56 (May 12, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 77 IBLA 160 (Nov. 16, 1983)
 943 -----72 IBLA 39 (Apr. 6, 1983)

78 STAT:

page 557 -----5 OHA 79 (Jan. 18, 1983)
 5 OHA 127 (Mar. 31, 1983)
 751 -----72 IBLA 197 (Apr. 19, 1983)
 986 -----75 IBLA 168 (Aug. 19, 1983)
 76 IBLA 252 (Oct. 17, 1983)

79 STAT:

page 897 -----11 IBIA 267 (Aug. 8, 1983)
 1295 -----74 IBLA 271 (July 25, 1983)

80 STAT:

page 915 -----72 IBLA 261, 90 I.D. 189 (1983)

81 STAT:

page 660 -----73 IBLA 268 (June 7, 1983)

82 STAT:

page 80 -----11 IBIA 237 (July 6, 1983)

84 STAT:

page 1874 -----12 IBIA 39 (Oct. 18, 1983)
 1894 -----5 OHA 96 (Feb. 25, 1983)

85 STAT:

page 97 -----IBCA-1591-6-82 & 1605-7-82,
 90 I.D. 41 (1983)
 688 -----11 IBIA 155, 90 I.D. 165 (1983)
 77 IBLA 181 (Nov. 18, 1983)
 77 IBLA 316 (Nov. 30, 1983)
 77 IBLA 347 (Dec. 5, 1983)
 698 -----11 IBIA 155, 90 I.D. 165 (1983)

86 STAT:

page 45 -----73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 886 -----72 IBLA 261, 90 I.D. 189 (1983)

88 STAT:

page 2203 -----11 IBIA 285, 90 I.D. 389 (1983)

89 STAT:

page 1926 -----IBCA-1303-9-79, 90 I.D. 401 (1983)

90 STAT:

page 1083 -----72 IBLA 110 (Apr. 14, 1983)
 1087 -----71 IBLA 129 (Mar. 7, 1983)
 1320 -----72 IBLA 261, 90 I.D. 189 (1983)
 1342 -----74 IBLA 56, 90 I.D. 262 (1983)
 2641 -----11 IBIA 285, 90 I.D. 389 (1983)
 2739 -----74 IBLA 350 (July 28, 1983)
 2743 -----73 IBLA 320 (June 7, 1983)
 74 IBLA 295 (July 27, 1983)
 76 IBLA 170 (Sept. 30, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 77 IBLA 395 (Dec. 9, 1983)
 78 IBLA 155 (Dec. 29, 1983)
 2750 -----74 IBLA 4 (June 21, 1983)
 2751 -----75 IBLA 16, 90 I.D. 352 (1983)
 2786 -----73 IBLA 226 (May 31, 1983)
 74 IBLA 4 (June 21, 1983)
 2787 -----74 IBLA 373, 90 I.D. 338 (1983)
 78 IBLA 155 (Dec. 29, 1983)
 2789 -----11 IBIA 155, 90 I.D. 165 (1983)
 72 IBLA 373 (May 4, 1983)
 73 IBLA 156 (May 24, 1983)
 73 IBLA 167 (May 24, 1983)
 74 IBLA 295 (July 27, 1983)
 74 IBLA 373, 90 I.D. 338 (1983)
 76 IBLA 20 (Sept. 6, 1983)
 77 IBLA 130 (Nov. 15, 1983)
 2792 -----73 IBLA 320 (June 7, 1983)
 74 IBLA 295 (July 27, 1983)
 2793 -----70 IBLA 39 (Jan. 10, 1983)
 74 IBLA 275 (July 25, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 77 IBLA 395 (Dec. 9, 1983)

United States Statutes

91 STAT:

page 445 -----74 IBLA 48 (June 28, 1983)
 1290 -----71 IBLA 96 (Feb. 24, 1983)

92 STAT:

page 2062 -----76 IBLA 4 (Sept. 6, 1983)
 2319 -----12 IBIA 80, 90 I.D. 521 (1983)

93 STAT:

page 1466 -----75 IBLA 16, 90 I.D. 352 (1983)

94 STAT:

page 338 -----74 IBLA 285 (July 25, 1983)
 -----76 IBLA 20 (Sept. 6, 1983)
 948 -----71 IBLA 183 (Mar. 10, 1983)
 2325 -----IBCA-1556-2-82 (June 27, 1983)
 -----IBCA-1536-3-82, 90 I.D. 297 (1983)
 -----11 IBIA 285, 90 I.D. 389 (1983)
 2371 -----70 IBLA 171 (Jan. 20, 1983)
 -----71 IBLA 394 (Mar. 30, 1983)
 -----74 IBLA 373, 90 I.D. 338 (1983)
 -----75 IBLA 16, 90 I.D. 352 (1983)
 -----75 IBLA 316 (Aug. 30, 1983)
 -----76 IBLA 370 (Oct. 25, 1983)
 -----77 IBLA 20 (Oct. 31, 1983)
 -----77 IBLA 130 (Nov. 15, 1983)
 -----77 IBLA 181 (Nov. 18, 1983)
 -----77 IBLA 316 (Nov. 30, 1983)
 -----77 IBLA 321 (Dec. 1, 1983)
 -----77 IBLA 383, 90 I.D. 543 (1983)
 -----5 OHA 229 (Nov. 10, 1983)
 2377 -----70 IBLA 171 (Jan. 20, 1983)
 2380 -----77 IBLA 383, 90 I.D. 543 (1983)
 2381 -----70 IBLA 171 (Jan. 20, 1983)
 2382 -----77 IBLA 347 (Dec. 5, 1983)
 2399 -----75 IBLA 16, 90 I.D. 352 (1983)
 2403 -----75 IBLA 16, 90 I.D. 352 (1983)
 2419 -----75 IBLA 16, 90 I.D. 352 (1983)
 2435 -----71 IBLA 394 (Mar. 30, 1983)
 -----77 IBLA 316 (Nov. 30, 1983)
 2436 -----77 IBLA 316 (Nov. 30, 1983)
 2489 -----70 IBLA 171 (Jan. 20, 1983)
 -----74 IBLA 373, 90 I.D. 338 (1983)
 -----77 IBLA 20 (Oct. 31, 1983)
 2497 -----77 IBLA 228 (Nov. 28, 1983)
 2499 -----75 IBLA 316 (Aug. 30, 1983)
 2533 -----77 IBLA 228 (Nov. 28, 1983)
 2539 -----77 IBLA 228 (Nov. 28, 1983)
 2542 -----77 IBLA 228 (Nov. 28, 1983)

94 STAT: Continued

page 3381 -----72 IBLA 373 (May 4, 1983)
 -----73 IBLA 156 (May 24, 1983)
 -----74 IBLA 4 (June 21, 1983)
 -----74 IBLA 20 (June 24, 1983)
 -----74 IBLA 350 (July 28, 1983)
 -----76 IBLA 205 (Oct. 11, 1983)

95 STAT:

page 1070 -----70 IBLA 324 (Jan. 31, 1983)
 -----71 IBLA 328 (Mar. 23, 1983)
 -----73 IBLA 203 (May 27, 1983)
 -----73 IBLA 295 (June 7, 1983)
 1391 -----12 IBIA 80, 90 I.D. 521 (1983)

96 STAT:

page 1186 -----77 IBLA 35 (Oct. 31, 1983)
 1196 -----77 IBLA 35 (Oct. 31, 1983)
 1215 -----70 IBLA 93 (Jan. 11, 1983)
 1216 -----70 IBLA 93 (Jan. 11, 1983)
 2447 -----71 IBLA 105 (Feb. 25, 1983)
 -----71 IBLA 216 (Mar. 16, 1983)
 -----71 IBLA 224 (Mar. 17, 1983)
 -----71 IBLA 331 (Mar. 24, 1983)
 -----71 IBLA 336 (Mar. 28, 1983)
 -----71 IBLA 339 (Mar. 28, 1983)
 -----71 IBLA 390 (Mar. 29, 1983)
 -----72 IBLA 5 (Apr. 4, 1983)
 -----72 IBLA 18 (Apr. 4, 1983)
 -----72 IBLA 34 (Apr. 6, 1983)
 -----72 IBLA 39 (Apr. 6, 1983)
 -----72 IBLA 83 (Apr. 13, 1983)
 -----72 IBLA 120 (Apr. 14, 1983)
 -----72 IBLA 211 (Apr. 21, 1983)
 -----72 IBLA 333 (Apr. 29, 1983)
 -----72 IBLA 367 (May 3, 1983)
 -----72 IBLA 370 (May 4, 1983)
 -----73 IBLA 67 (May 16, 1983)
 -----73 IBLA 111 (May 23, 1983)
 -----75 IBLA 195 (Aug. 22, 1983)
 -----76 IBLA 1 (Sept. 6, 1983)
 -----76 IBLA 376 (Oct. 25, 1983)
 -----77 IBLA 32 (Oct. 31, 1983)
 -----77 IBLA 63 (Nov. 7, 1983)
 -----77 IBLA 214 (Nov. 22, 1983)
 2515 -----11 IBIA 155, 90 I.D. 165 (1983)

98 STAT:

page 2515 -----11 IBIA 124 (Mar. 22, 1983)

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(B) Revised Statutes

page 2306 -----72 IBLA 197 (Apr. 19, 1983)
 2307 -----72 IBLA 197 (Apr. 19, 1983)
 2337 -----76 IBLA 60 (Sept. 21, 1983)
 2339 -----77 IBLA 80 (Nov. 9, 1983)

page 2392 -----76 IBLA 301, 90 I.D. 464 (1983)
 2455 -----76 IBLA 192 (Oct. 6, 1983)
 2477 -----72 IBLA 125 (Apr. 18, 1983)
 -----77 IBLA 270 (Nov. 30, 1983)

(C) United States Codes

TITLE 5:

sec. 301 -----12 IBIA 49, 90 I.D. 474 (1983)
 452-458e ----- IBCA-1234-12-78 (Apr. 14, 1983)
 504 -----11 IBIA 285, 90 I.D. 389 (1983)
 504(a)(1) ----- IBCA-1672-4-83, 90 I.D. 379 (1983)
 11 IBIA 285, 90 I.D. 389 (1983)
 504(a)(3) ----- IBCA-1672-4-83, 90 I.D. 379 (1983)
 551 -----11 IBIA 285, 90 I.D. 389 (1983)
 551-559 -----12 IBIA 80, 90 I.D. 521 (1983)
 551(4) -----12 IBIA 80, 90 I.D. 521 (1983)
 12 IBIA 110, 90 I.D. 536 (1983)
 12 IBIA 116 (Dec. 9, 1983)
 12 IBIA 119, 90 I.D. 539 (1983)
 74 IBLA 26 (June 24, 1983)
 551(14) -----12 IBIA 80, 90 I.D. 521 (1983)
 552 -----11 IBIA 85, 90 I.D. 88 (1983)
 12 IBIA 80, 90 I.D. 521 (1983)
 12 IBIA 107 (Dec. 9, 1983)
 12 IBIA 110, 90 I.D. 536 (1983)
 12 IBIA 116 (Dec. 9, 1983)
 12 IBIA 119, 90 I.D. 539 (1983)
 70 IBLA 264, 90 I.D. 10 (1983)
 552(a) -----75 IBLA 298 (Aug. 29, 1983)
 552(a)(1) -----11 IBIA 168, 90 I.D. 169 (1983)
 12 IBIA 80, 90 I.D. 521 (1983)
 552(a)(1)(D) -12 IBIA 80, 90 I.D. 521 (1983)
 12 IBIA 110, 90 I.D. 536 (1983)
 12 IBIA 116 (Dec. 9, 1983)
 12 IBIA 119, 90 I.D. 539 (1983)
 552(a)(2) -----11 IBIA 214, 90 I.D. 283 (1983)
 70 IBLA 145 (Jan. 17, 1983)
 552(a)(2)(B) -12 IBIA 110, 90 I.D. 536 (1983)
 552(2)(ii) -----12 IBIA 80, 90 I.D. 521 (1983)
 553 -----74 IBLA 26 (June 24, 1983)
 74 IBLA 389 (July 29, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 77 IBLA 96 (Nov. 14, 1983)
 553(b) -----74 IBLA 26 (June 26, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 553(b)(3)(A) -74 IBLA 26 (June 24, 1983)
 553(b)(A) -----75 IBLA 140 (Aug. 17, 1983)
 554 -----11 IBIA 285, 90 I.D. 389 (1983)
 76 IBLA 68 (Sept. 21, 1983)
 77 IBLA 395 (Dec. 9, 1983)
 554(a) -----11 IBIA 285, 90 I.D. 389 (1983)
 554-557 -----11 IBIA 246 (July 15, 1983)
 556(d) -----12 IBIA 67, 90 I.D. 515 (1983)
 70 IBLA 244 (Jan. 25, 1983)
 557(b) -----12 IBIA 80, 90 I.D. 521 (1983)
 74 IBLA 48 (June 28, 1983)
 77 IBLA 347 (Dec. 5, 1983)
 558(c) -----11 IBIA 249, 90 I.D. 329 (1983)
 701(a)(2) -----11 IBIA 184, 90 I.D. 243 (1983)
 702 -----11 IBIA 184, 90 I.D. 243 (1983)
 74 IBLA 323 (July 28, 1983)
 78 IBLA 124 (Dec. 27, 1983)
 704 -----73 IBLA 328 (June 8, 1983)
 M-36900 (Supp. I), 90 I.D. 345 (1983)
 706 -----12 IBIA 80, 90 I.D. 521 (1983)
 706(1)(E) -----12 IBIA 80, 90 I.D. 521 (1983)
 5536 -----5 OHA 79 (Jan. 18, 1983)
 5 OHA 117 (Mar. 22, 1983)
 5 OHA 135 (Apr. 8, 1983)
 5 OHA 215 (Oct. 26, 1983)
 5911 -----5 OHA 108 (Mar. 15, 1983)
 5 OHA 117 (Mar. 22, 1983)
 5 OHA 127 (Mar. 31, 1983)
 5 OHA 215 (Oct. 26, 1983)
 5911(c) -----5 OHA 79 (Jan. 18, 1983)
 5 OHA 135 (Apr. 8, 1983)
 5 OHA 139 (July 6, 1983)

TITLE 7:

sec. 1000 et seq. --70 IBLA 150 (Jan. 18, 1983)
 1006b -----70 IBLA 150 (Jan. 18, 1983)
 1011 -----75 IBLA 44 (Aug. 5, 1983)
 1011(a) -----75 IBLA 44 (Aug. 5, 1983)

TITLE 8:

sec. 1401 -----70 IBLA 196 (Jan. 21, 1983)
 76 IBLA 205 (Oct. 11, 1983)

TITLE 9:

sec. 1 et seq. --11 IBIA 184, 90 I.D. 243 (1983)

TITLE 12:

sec. 342 -----71 IBLA 203 (Mar. 14, 1983)
 360 -----71 IBLA 203 (Mar. 14, 1983)

TITLE 15:

sec. 637(a)(i) ----- IBCA-1198-7-78, 90 I.D. 366 (1983)
 717-717w -----12 IBIA 49, 90 I.D. 474 (1983)
 3314 -----78 IBLA 93 (Dec. 19, 1983)
 3315 -----78 IBLA 93 (Dec. 19, 1983)

TITLE 16:

sec. 1c(a) -----73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 21-355 -----70 IBLA 264, 90 I.D. 10 (1983)
 273 -----72 IBLA 88 (Apr. 13, 1983)
 410hh -----70 IBLA 171 (Jan. 20, 1983)
 431 -----73 IBLA 16 (May 5, 1983)
 75 IBLA 16, 90 I.D. 352 (1983)
 447 -----74 IBLA 56, 90 I.D. 262 (1983)
 460m-8-
 460m-14 -----73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 460n -----73 IBLA 301 (June 7, 1983)
 74 IBLA 92 (June 30, 1983)
 74 IBLA 267 (July 25, 1983)
 460n-3 -----74 IBLA 92 (June 30, 1983)
 74 IBLA 267 (July 25, 1983)
 460q-460q-9 --74 IBLA 271 (July 25, 1983)
 460v-460v-8 --77 IBLA 137 (Nov. 15, 1983)
 460v-4 -----77 IBLA 137 (Nov. 15, 1983)
 460v-5 -----77 IBLA 137 (Nov. 15, 1983)
 460aa et seq. -----77 IBLA 205 (Nov. 18, 1983)
 466aa -----77 IBLA 205 (Nov. 22, 1983)
 470-470m -----72 IBLA 261, 90 I.D. 189 (1983)
 470f -----72 IBLA 261, 90 I.D. 189 (1983)
 478 -----73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 78 IBLA 3 (Dec. 12, 1983)
 482 -----70 IBLA 264, 90 I.D. 10 (1983)
 483 -----75 IBLA 396 (Sept. 2, 1983)
 520 -----72 IBLA 110 (Apr. 14, 1983)
 521a -----71 IBLA 268 (Mar. 22, 1983)
 524 -----77 IBLA 395 (Dec. 9, 1983)
 551 -----78 IBLA 3 (Dec. 12, 1983)
 661 -----70 IBLA 240 (Jan. 25, 1983)
 73 IBLA 353 (June 14, 1983)
 668 -----73 IBLA 39 (May 11, 1983)
 668dd -----73 IBLA 353 (June 14, 1983)
 668dd(a) -----70 IBLA 240 (Jan. 25, 1983)
 678a -----70 IBLA 264, 90 I.D. 10 (1983)
 818 -----72 IBLA 48 (Apr. 12, 1983)
 76 IBLA 340 (Oct. 20, 1983)

United States Codes

TITLE 16: Continued

sec. 818: Cont'd 77 IBLA 51 (Nov. 7, 1983)
 77 IBLA 380 (Dec. 7, 1983)
 1131 -----71 IBLA 112 (Feb. 28, 1983)
 72 IBLA 100 (Apr. 14, 1983)
 72 IBLA 125 (Apr. 18, 1983)
 74 IBLA 106 (June 30, 1983)
 75 IBLA 163 (Aug. 18, 1983)
 75 IBLA 256 (Aug. 26, 1983)
 76 IBLA 23 (Sept. 8, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 78 IBLA 133 (Dec. 29, 1983)
 1131 et seq. ---72 IBLA 62 (Apr. 12, 1983)
 1131(c) -----71 IBLA 4 (Feb. 10, 1983)
 71 IBLA 67 (Feb. 22, 1983)
 71 IBLA 100 (Feb. 24, 1983)
 71 IBLA 112 (Feb. 28, 1983)
 71 IBLA 165 (Mar. 10, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 75 IBLA 163 (Aug. 18, 1983)
 75 IBLA 220 (Aug. 23, 1983)
 75 IBLA 256 (Aug. 26, 1983)
 76 IBLA 31 (Sept. 8, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 78 IBLA 133 (Dec. 29, 1983)
 1132 -----71 IBLA 402 (Mar. 31, 1983)
 75 IBLA 220 (Aug. 23, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 1133 -----71 IBLA 402 (Mar. 31, 1983)
 1133(d)(3) ---73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 76 IBLA 4 (Sept. 6, 1983)
 1271-1287 ---71 IBLA 183 (Mar. 10, 1983)
 1274 -----72 IBLA 75 (Apr. 12, 1983)
 1274(a)(24) ---71 IBLA 183 (Mar. 10, 1983)
 71 IBLA 380 (Mar. 29, 1983)
 1274(a)(24)(D)-71 IBLA 183 (Mar. 10, 1983)
 1276(a)(23) ---71 IBLA 183 (Mar. 10, 1983)
 1278(b) -----71 IBLA 183 (Mar. 10, 1983)
 1280(a) -----71 IBLA 183 (Mar. 10, 1983)
 75 IBLA 171 (Aug. 19, 1983)
 1280(b) -----71 IBLA 183 (Mar. 10, 1983)
 1531 -----70 IBLA 214 (Jan. 24, 1983)
 1536 -----71 IBLA 72 (Feb. 22, 1983)
 73 IBLA 39 (May 11, 1983)
 72 IBLA 261, 90 I.D. 189 (1983)
 1536(a)(2) ---73 IBLA 39 (May 11, 1983)
 1536(a)(3) ---73 IBLA 39 (May 11, 1983)
 1901 -----74 IBLA 56, 90 I.D. 262 (1983)
 1907 -----74 IBLA 56, 90 I.D. 262 (1983)
 3101 -----72 IBLA 13 (Apr. 4, 1983)
 3148 -----77 IBLA 181 (Nov. 18, 1983)
 3148(c) -----77 IBLA 181 (Nov. 18, 1983)
 3148(e) -----77 IBLA 181 (Nov. 18, 1983)
 3215(a) -----70 IBLA 171 (Jan. 20, 1983)
 77 IBLA 20 (Oct. 31, 1983)
 3215(a)(1) ---70 IBLA 171 (Jan. 20, 1983)

TITLE 18:

sec. 43 -----5 OHA 141 (Aug. 10, 1983)
 1001 -----IBCA-1536-3-82, 90 I.D. 297 (1983)
 73 IBLA 111 (May 23, 1983)
 73 IBLA 220 (May 27, 1983)
 73 IBLA 372 (June 15, 1983)
 1151 -----11 IBIA 237 (July 6, 1983)
 1162 -----11 IBIA 237 (July 6, 1983)
 1856 -----77 IBLA 245 (Nov. 30, 1983)

TITLE 20:

sec. 631-647 -----12 IBIA 80, 90 I.D. 521 (1983)

TITLE 25:

sec. 2 -----11 IBIA 184, 90 I.D. 243 (1983)
 312 -----12 IBIA 49, 90 I.D. 474 (1983)
 312-318 -----12 IBIA 49, 90 I.D. 474 (1983)
 321 -----12 IBIA 49, 90 I.D. 474 (1983)
 323 -----12 IBIA 49, 90 I.D. 474 (1983)
 323-328 -----12 IBIA 49, 90 I.D. 474 (1983)
 324 -----12 IBIA 49, 90 I.D. 474 (1983)
 332 -----70 IBLA 126 (Jan. 13, 1983)
 70 IBLA 196 (Jan. 21, 1983)
 74 IBLA 20 (June 24, 1983)
 334 -----70 IBLA 126 (Jan. 13, 1983)
 70 IBLA 165 (Jan. 19, 1983)
 70 IBLA 196 (Jan. 21, 1983)
 71 IBLA 1 (Feb. 9, 1983)
 74 IBLA 20 (June 24, 1983)
 75 IBLA 192 (Aug. 22, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 76 IBLA 192 (Oct. 6, 1983)
 76 IBLA 205 (Oct. 11, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 51 (Nov. 7, 1983)
 336 -----70 IBLA 165 (Jan. 19, 1983)
 71 IBLA 1 (Feb. 9, 1983)
 75 IBLA 192 (Aug. 22, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 337 -----77 IBLA 51 (Nov. 7, 1983)
 348 -----11 IBIA 77 (Mar. 15, 1983)
 12 IBIA 44 (Oct. 28, 1983)
 371 -----11 IBIA 77 (Mar. 15, 1983)
 11 IBIA 267 (Aug. 8, 1983)
 372-373 -----11 IBIA 179 (May 10, 1983)
 372a -----11 IBIA 179 (May 10, 1983)
 11 IBIA 237 (July 6, 1983)
 373 -----11 IBIA 77 (Mar. 15, 1983)
 380 -----11 IBIA 203 (May 27, 1983)
 396a-396f ---11 IBIA 54, 90 I.D. 61 (1983)
 396d -----11 IBIA 54, 90 I.D. 61 (1983)
 399 -----72 IBLA 337 (Apr. 29, 1983)
 407 -----11 IBIA 85, 90 I.D. 88 (1983)
 409a -----11 IBIA 124 (Mar. 22, 1983)
 415 -----11 IBIA 184, 90 I.D. 243 (1983)
 70 IBLA 126 (Jan. 13, 1983)
 70 IBLA 196 (Jan. 21, 1983)
 74 IBLA 20 (June 24, 1983)
 450 -----77 IBLA 228 (Nov. 28, 1983)
 450-450n ---11 IBIA 285, 90 I.D. 389 (1983)
 461-479 -----12 IBIA 49, 90 I.D. 474 (1983)
 464 -----11 IBIA 179 (May 10, 1983)
 465 -----11 IBIA 124 (Mar. 22, 1983)
 476 -----77 IBLA 228 (Nov. 28, 1983)
 564-564x ---11 IBIA 267 (Aug. 8, 1983)
 564h -----11 IBIA 267 (Aug. 8, 1983)
 565-565g ---11 IBIA 267 (Aug. 8, 1983)
 565a -----11 IBIA 267 (Aug. 8, 1983)
 565a(b) -----11 IBIA 267 (Aug. 8, 1983)
 607 -----12 IBIA 39 (Oct. 18, 1983)
 1321 -----11 IBIA 237 (July 6, 1983)
 1901 et seq. ---11 IBIA 39 (Jan. 7, 1983)
 1901-1952 ---11 IBIA 142 (Apr. 1, 1983)
 11 IBIA 146 (Apr. 4, 1983)
 1931-1934 ---11 IBIA 214, 90 I.D. 283 (1983)
 11 IBIA 226 (July 5, 1983)
 11 IBIA 276, 90 I.D. 376 (1983)
 11 IBIA 308 (Sept. 19, 1983)
 12 IBIA 67, 90 I.D. 515 (1983)
 1932 -----11 IBIA 226 (July 5, 1983)
 11 IBIA 276, 90 I.D. 376 (1983)
 12 IBIA 67, 90 I.D. 515 (1983)
 2005(c) -----12 IBIA 80, 90 I.D. 521 (1983)

TITLE 26:

sec. 4121 -----72 IBLA 337 (Apr. 29, 1983)

United States Codes

TITLE 28:

sec. 378 -----11 IBIA 37 (Jan. 4, 1983)
 1360 -----11 IBIA 237 (July 6, 1983)
 2412 ----- IBCA-1556-2-82 (June 27, 1983)
 IBCA-1536-3-82, 90 I.D. 297 (1983)
 2415 ----- IBCA-1600-7-82 (Mar. 31, 1983)

TITLE 30:

sec. 11 -----75 IBLA 388 (Sept. 2, 1983)
 21-54 -----70 IBLA 1 (Jan. 6, 1983)
 22 -----70 IBLA 244 (Jan. 25, 1983)
 70 IBLA 264, 90 I.D. 10 (1983)
 71 IBLA 334 (Mar. 28, 1983)
 72 IBLA 75 (Apr. 12, 1983)
 73 IBLA 19 (May 9, 1983)
 74 IBLA 34 (June 27, 1983)
 74 IBLA 37 (June 27, 1983)
 74 IBLA 117 (June 30, 1983)
 75 IBLA 16, 90 I.D. 352 (1983)
 75 IBLA 358 (Aug. 31, 1983)
 76 IBLA 111 (Sept. 21, 1983)
 76 IBLA 192 (Oct. 6, 1983)
 76 IBLA 212 (Oct. 17, 1983)
 76 IBLA 301, 90 I.D. 464 (1983)
 77 IBLA 261 (Nov. 30, 1983)
 22 et seq. ---70 IBLA 328 (Feb. 1, 1983)
 71 IBLA 268 (Mar. 22, 1983)
 72 IBLA 254 (Apr. 27, 1983)
 77 IBLA 205 (Nov. 22, 1983)
 23 -----70 IBLA 228 (Jan. 24, 1983)
 71 IBLA 268 (Mar. 22, 1983)
 72 IBLA 88 (Apr. 13, 1983)
 75 IBLA 179 (Aug. 22, 1983)
 75 IBLA 358 (Aug. 31, 1983)
 77 IBLA 205 (Nov. 22, 1983)
 24 -----75 IBLA 16, 90 I.D. 352 (1983)
 78 IBLA 112 (Dec. 22, 1983)
 27 -----76 IBLA 349 (Oct. 24, 1983)
 28 -----70 IBLA 231 (Jan. 25, 1983)
 71 IBLA 195 (Mar. 14, 1983)
 71 IBLA 402 (Mar. 31, 1983)
 72 IBLA 235 (Apr. 26, 1983)
 72 IBLA 324 (Apr. 28, 1983)
 73 IBLA 1 (May 5, 1983)
 73 IBLA 52 (May 12, 1983)
 73 IBLA 78 (May 17, 1983)
 73 IBLA 117 (May 23, 1983)
 74 IBLA 117 (June 30, 1983)
 75 IBLA 62 (Aug. 5, 1983)
 75 IBLA 100 (Aug. 11, 1983)
 75 IBLA 332 (Aug. 30, 1983)
 75 IBLA 346 (Aug. 31, 1983)
 76 IBLA 90 (Sept. 21, 1983)
 76 IBLA 93 (Sept. 21, 1983)
 76 IBLA 96 (Sept. 21, 1983)
 76 IBLA 212 (Oct. 17, 1983)
 76 IBLA 215 (Oct. 17, 1983)
 28-1 -----70 IBLA 42 (Jan. 10, 1983)
 72 IBLA 232 (Apr. 26, 1983)
 73 IBLA 374 (June 15, 1983)
 73 IBLA 383 (June 15, 1983)
 28b -----71 IBLA 402 (Mar. 31, 1983)
 28b-c -----73 IBLA 323 (June 7, 1983)
 28c -----73 IBLA 323 (June 7, 1983)
 29 -----71 IBLA 169 (Mar. 10, 1983)
 74 IBLA 117 (June 30, 1983)
 75 IBLA 16, 90 I.D. 352 (1983)
 75 IBLA 89 (Aug. 11, 1983)
 35 -----72 IBLA 235 (Apr. 26, 1983)
 77 IBLA 366 (Dec. 7, 1983)
 36 -----72 IBLA 235 (Apr. 26, 1983)
 75 IBLA 168 (Aug. 19, 1983)
 75 IBLA 388 (Sept. 2, 1983)
 77 IBLA 366 (Dec. 7, 1983)

30 STAT: Continued

sec. 38 -----71 IBLA 178 (Mar. 10, 1983)
 72 IBLA 235 (Apr. 26, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 42 -----76 IBLA 59 (Sept. 21, 1983)
 161 -----71 IBLA 178 (Mar. 10, 1983)
 78 IBLA 155 (Dec. 29, 1983)
 181 -----71 IBLA 19 (Feb. 15, 1983)
 71 IBLA 96 (Feb. 24, 1983)
 71 IBLA 360 (Mar. 28, 1983)
 71 IBLA 374 (Mar. 29, 1983)
 73 IBLA 203 (May 27, 1983)
 73 IBLA 295 (June 7, 1983)
 74 IBLA 96 (June 30, 1983)
 74 IBLA 242 (July 19, 1983)
 75 IBLA 171 (Aug. 19, 1983)
 75 IBLA 328 (Aug. 30, 1983)
 76 IBLA 208 (Oct. 11, 1983)
 76 IBLA 327 (Oct. 19, 1983)
 76 IBLA 395 (Oct. 27, 1983)
 77 IBLA 144 (Nov. 15, 1983)
 181-237 -----72 IBLA 387 (May 5, 1983)
 181-263 -----76 IBLA 340 (Oct. 20, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 181-287 -----70 IBLA 1 (Jan. 6, 1983)
 71 IBLA 32 (Mar. 22, 1983)
 76 IBLA 103 (Sept. 21, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 78 IBLA 115 (Dec. 22, 1983)
 181 et seq. ---76 IBLA 37 (Sept. 14, 1983)
 77 IBLA 137 (Nov. 15, 1983)
 182 -----73 IBLA 295 (June 7, 1983)
 184 -----73 IBLA 295 (June 7, 1983)
 74 IBLA 345 (July 28, 1983)
 78 IBLA 162 (Dec. 30, 1983)
 184(d) -----70 IBLA 154 (Jan. 18, 1983)
 70 IBLA 183, 90 I.D. 3 (1983)
 77 IBLA 35 (Oct. 31, 1983)
 184(h) -----70 IBLA 373 (Feb. 4, 1983)
 74 IBLA 18 (June 24, 1983)
 74 IBLA 345 (July 28, 1983)
 184(h)(1) ---71 IBLA 72 (Feb. 22, 1983)
 184(h)(2) ---71 IBLA 23 (Feb. 15, 1983)
 71 IBLA 32 (Mar. 2, 1983)
 77 IBLA 35 (Oct. 31, 1983)
 78 IBLA 162 (Dec. 30, 1983)
 184(j) -----74 IBLA 180 (July 18, 1983)
 185 -----77 IBLA 46 (Nov. 1, 1983)
 78 IBLA 128 (Dec. 29, 1983)
 M-36900 (Supp. I), 90 I.D. 345
 (1983)
 185(d) -----78 IBLA 128 (Dec. 29, 1983)
 185(g) -----78 IBLA 128 (Dec. 29, 1983)
 185(l) -----77 IBLA 46 (Nov. 1, 1983)
 187 -----70 IBLA 313 (Jan. 28, 1983)
 70 IBLA 386 (Feb. 9, 1983)
 71 IBLA 53 (Feb. 22, 1983)
 71 IBLA 312 (Mar. 22, 1983)
 73 IBLA 328 (June 8, 1983)
 187a -----70 IBLA 313 (Jan. 28, 1983)
 71 IBLA 53 (Feb. 22, 1983)
 72 IBLA 34 (Apr. 6, 1983)
 73 IBLA 162 (May 24, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 188 -----70 IBLA 128 (Jan. 14, 1983)
 71 IBLA 42 (Feb. 17, 1983)
 71 IBLA 53 (Feb. 22, 1983)
 71 IBLA 105 (Feb. 25, 1983)
 71 IBLA 216 (Mar. 16, 1983)
 71 IBLA 224 (Mar. 17, 1983)
 71 IBLA 331 (Mar. 24, 1983)
 71 IBLA 336 (Mar. 28, 1983)
 71 IBLA 339 (Mar. 28, 1983)
 71 IBLA 390 (Mar. 29, 1983)
 72 IBLA 5 (Apr. 4, 1983)

TITLE 30: Continued

sec. 188: Cont'd 72 IBLA 18 (Apr. 4, 1983)
 72 IBLA 34 (Apr. 6, 1983)
 72 IBLA 39 (Apr. 6, 1983)
 72 IBLA 83 (Apr. 13, 1983)
 72 IBLA 120 (Apr. 14, 1983)
 72 IBLA 211 (Apr. 21, 1983)
 72 IBLA 333 (Apr. 29, 1983)
 72 IBLA 367 (May 3, 1983)
 72 IBLA 370 (May 4, 1983)
 73 IBLA 67 (May 16, 1983)
 73 IBLA 111 (May 23, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 76 IBLA 1 (Sept. 6, 1983)
 76 IBLA 322 (Oct. 19, 1983)
 76 IBLA 376 (Oct. 25, 1983)
 77 IBLA 32 (Oct. 31, 1983)
 77 IBLA 63 (Nov. 7, 1983)
 77 IBLA 214 (Nov. 22, 1983)
 188(a) -----71 IBLA 72 (Feb. 22, 1983)
 188(b) -----70 IBLA 97 (Jan. 11, 1983)
 70 IBLA 313 (Jan. 28, 1983)
 71 IBLA 72 (Feb. 22, 1983)
 71 IBLA 224 (Mar. 17, 1983)
 71 IBLA 336 (Mar. 28, 1983)
 71 IBLA 339 (Mar. 28, 1983)
 71 IBLA 390 (Mar. 29, 1983)
 72 IBLA 5 (Apr. 4, 1983)
 72 IBLA 18 (Apr. 4, 1983)
 72 IBLA 34 (Apr. 6, 1983)
 72 IBLA 39 (Apr. 6, 1983)
 72 IBLA 83 (Apr. 13, 1983)
 72 IBLA 211 (Apr. 21, 1983)
 72 IBLA 333 (Apr. 29, 1983)
 72 IBLA 370 (May 4, 1983)
 73 IBLA 67 (May 16, 1983)
 73 IBLA 111 (May 23, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 76 IBLA 1 (Sept. 6, 1983)
 76 IBLA 177 (Sept. 30, 1983)
 76 IBLA 322 (Oct. 19, 1983)
 76 IBLA 376 (Oct. 25, 1983)
 77 IBLA 63 (Nov. 7, 1983)
 77 IBLA 214 (Nov. 22, 1983)
 188(c) -----70 IBLA 97 (Jan. 11, 1983)
 70 IBLA 313 (Jan. 28, 1983)
 71 IBLA 105 (Feb. 25, 1983)
 71 IBLA 216 (Mar. 16, 1983)
 71 IBLA 224 (Mar. 17, 1983)
 71 IBLA 299 (Mar. 22, 1983)
 71 IBLA 331 (Mar. 24, 1983)
 71 IBLA 336 (Mar. 28, 1983)
 71 IBLA 339 (Mar. 28, 1983)
 71 IBLA 390 (Mar. 29, 1983)
 72 IBLA 5 (Apr. 4, 1983)
 72 IBLA 18 (Apr. 4, 1983)
 72 IBLA 34 (Apr. 6, 1983)
 72 IBLA 39 (Apr. 6, 1983)
 72 IBLA 83 (Apr. 13, 1983)
 72 IBLA 120 (Apr. 14, 1983)
 72 IBLA 211 (Apr. 21, 1983)
 72 IBLA 333 (Apr. 29, 1983)
 72 IBLA 367 (May 3, 1983)
 72 IBLA 370 (May 4, 1983)
 73 IBLA 67 (May 16, 1983)
 73 IBLA 101 (May 23, 1983)
 73 IBLA 111 (May 23, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 76 IBLA 1 (Sept. 6, 1983)
 76 IBLA 177 (Sept. 30, 1983)
 76 IBLA 376 (Oct. 25, 1983)
 77 IBLA 63 (Nov. 7, 1983)
 77 IBLA 214 (Nov. 22, 1983)
 188(d) -----72 IBLA 39 (Apr. 6, 1983)
 189 -----71 IBLA 42 (Feb. 17, 1983)
 78 IBLA 93 (Dec. 19, 1983)

30 STAT: Continued

sec. 201 -----11 IBIA 249, 90 I.D. 329 (1983)
 71 IBLA 96 (Feb. 24, 1983)
 72 IBLA 110 (Apr. 14, 1983)
 76 IBLA 124 (Sept. 26, 1983)
 201-209 -----70 IBLA 386 (Feb. 9, 1983)
 73 IBLA 328 (June 8, 1983)
 76 IBLA 312 (Oct. 19, 1983)
 201(b) -----72 IBLA 110 (Apr. 14, 1983)
 76 IBLA 103 (Sept. 21, 1983)
 201(b)(1) -----72 IBLA 110 (Apr. 14, 1983)
 207 -----70 IBLA 386 (Feb. 9, 1983)
 71 IBLA 13 (Feb. 10, 1983)
 71 IBLA 92 (Feb. 24, 1983)
 71 IBLA 129 (Mar. 7, 1983)
 73 IBLA 328 (June 8, 1983)
 74 IBLA 389 (July 29, 1983)
 76 IBLA 124 (Sept. 26, 1983)
 76 IBLA 312 (Oct. 19, 1983)
 76 IBLA 387, 90 I.D. 470 (1983)
 207(a) -----70 IBLA 386 (Feb. 9, 1983)
 73 IBLA 328 (June 8, 1983)
 74 IBLA 389 (July 29, 1983)
 76 IBLA 312 (Oct. 19, 1983)
 76 IBLA 387, 90 I.D. 470 (1983)
 207(b) -----74 IBLA 389 (July 29, 1983)
 207(c) -----76 IBLA 312 (Oct. 19, 1983)
 209 -----70 IBLA 13 (Jan. 28, 1983)
 70 IBLA 386 (Feb. 9, 1983)
 73 IBLA 295 (June 7, 1983)
 74 IBLA 389 (July 29, 1983)
 76 IBLA 124 (Sept. 26, 1983)
 76 IBLA 312 (Oct. 19, 1983)
 211 -----74 IBLA 323 (July 28, 1983)
 211(a) -----75 IBLA 128 (Aug. 15, 1983)
 211(b) -----75 IBLA 128 (Aug. 15, 1983)
 75 IBLA 232 (Aug. 23, 1983)
 226 -----70 IBLA 18 (Jan. 6, 1983)
 70 IBLA 52 (Jan. 10, 1983)
 70 IBLA 254 (Jan. 25, 1983)
 70 IBLA 259 (Jan. 26, 1983)
 70 IBLA 319 (Jan. 31, 1983)
 71 IBLA 19 (Feb. 15, 1983)
 71 IBLA 23 (Feb. 15, 1983)
 71 IBLA 224 (Mar. 17, 1983)
 72 IBLA 34 (Apr. 6, 1983)
 73 IBLA 73 (May 17, 1983)
 73 IBLA 86 (May 18, 1983)
 73 IBLA 268 (June 7, 1983)
 73 IBLA 295 (June 7, 1983)
 73 IBLA 308 (June 7, 1983)
 73 IBLA 353 (June 14, 1983)
 74 IBLA 159 (July 12, 1983)
 75 IBLA 4 (Aug. 2, 1983)
 75 IBLA 171 (Aug. 19, 1983)
 75 IBLA 186 (Aug. 22, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 75 IBLA 209 (Aug. 22, 1983)
 76 IBLA 1 (Sept. 6, 1983)
 76 IBLA 146 (Sept. 26, 1983)
 76 IBLA 151, 90 I.D. 432 (1983)
 76 IBLA 262 (Oct. 17, 1983)
 77 IBLA 35 (Oct. 31, 1983)
 77 IBLA 63 (Nov. 7, 1983)
 77 IBLA 147 (Nov. 15, 1983)
 77 IBLA 164 (Nov. 17, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 78 IBLA 78 (Dec. 16, 1983)
 78 IBLA 139 (Dec. 29, 1983)
 78 IBLA 172 (Dec. 30, 1983)
 226(a) -----70 IBLA 324 (Jan. 31, 1983)
 71 IBLA 116 (Mar. 2, 1983)
 71 IBLA 328 (Mar. 23, 1983)
 71 IBLA 360 (Mar. 28, 1983)
 71 IBLA 374 (Mar. 29, 1983)
 73 IBLA 203 (May 27, 1983)
 76 IBLA 395 (Oct. 27, 1983)

United States Codes

TITLE 30: Continued

sec. 226(b) -----70 IBLA 155 (Jan. 13, 1983)
 70 IBLA 294 (Jan. 27, 1983)
 70 IBLA 324 (Jan. 31, 1983)
 70 IBLA 377 (Feb. 8, 1983)
 71 IBLA 39 (Feb. 16, 1983)
 71 IBLA 122 (Mar. 7, 1983)
 71 IBLA 134 (Mar. 9, 1983)
 71 IBLA 149 (Mar. 9, 1983)
 71 IBLA 241 (Mar. 21, 1983)
 71 IBLA 250 (Mar. 21, 1983)
 71 IBLA 253 (Mar. 21, 1983)
 71 IBLA 302 (Mar. 22, 1983)
 71 IBLA 328 (Mar. 23, 1983)
 72 IBLA 242 (Apr. 27, 1983)
 72 IBLA 329 (Apr. 29, 1983)
 72 IBLA 390 (May 5, 1983)
 73 IBLA 22 (May 9, 1983)
 73 IBLA 176 (May 26, 1983)
 73 IBLA 203 (May 27, 1983)
 73 IBLA 253 (June 2, 1983)
 73 IBLA 258 (June 7, 1983)
 73 IBLA 340 (June 10, 1983)
 73 IBLA 377 (June 15, 1983)
 74 IBLA 180 (July 18, 1983)
 74 IBLA 256 (July 22, 1983)
 75 IBLA 11 (Aug. 2, 1983)
 75 IBLA 121 (Aug. 15, 1983)
 75 IBLA 133 (Aug. 15, 1983)
 75 IBLA 216 (Aug. 23, 1983)
 75 IBLA 247 (Aug. 24, 1983)
 75 IBLA 349 (Aug. 31, 1983)
 76 IBLA 195 (Oct. 6, 1983)
 78 IBLA 24 (Dec. 12, 1983)
 226(c) -----69 IBLA 357 (Jan. 3, 1983)
 69 IBLA 371 (Jan. 3, 1983)
 70 IBLA 21 (Jan. 6, 1983)
 70 IBLA 25 (Jan. 6, 1983)
 70 IBLA 183, 90 I.D. 3 (1983)
 70 IBLA 361 (Feb. 3, 1983)
 70 IBLA 373 (Feb. 4, 1983)
 71 IBLA 23 (Feb. 15, 1983)
 71 IBLA 29 (Feb. 16, 1983)
 71 IBLA 42 (Feb. 17, 1983)
 71 IBLA 349 (Mar. 28, 1983)
 71 IBLA 374 (Mar. 29, 1983)
 72 IBLA 45 (Apr. 7, 1983)
 73 IBLA 36 (May 9, 1983)
 73 IBLA 120 (May 23, 1983)
 73 IBLA 234 (May 31, 1983)
 73 IBLA 241 (June 1, 1983)
 73 IBLA 244 (June 2, 1983)
 73 IBLA 291 (June 7, 1983)
 73 IBLA 350 (June 14, 1983)
 74 IBLA 31 (June 24, 1983)
 74 IBLA 185 (July 18, 1983)
 74 IBLA 192 (July 18, 1983)
 74 IBLA 260 (July 22, 1983)
 74 IBLA 345 (July 28, 1983)
 74 IBLA 357 (July 28, 1983)
 74 IBLA 383 (July 29, 1983)
 75 IBLA 113 (Aug. 12, 1983)
 75 IBLA 133 (Aug. 15, 1983)
 76 IBLA 186 (Oct. 3, 1983)
 76 IBLA 200 (Oct. 6, 1983)
 76 IBLA 262 (Oct. 17, 1983)
 76 IBLA 287 (Oct. 18, 1983)
 76 IBLA 344 (Oct. 24, 1983)
 77 IBLA 12 (Oct. 31, 1983)
 77 IBLA 15 (Oct. 31, 1983)
 77 IBLA 150 (Nov. 15, 1983)
 77 IBLA 199 (Nov. 18, 1983)
 77 IBLA 232 (Nov. 29, 1983)
 78 IBLA 24 (Dec. 12, 1983)

TITLE 30: Continued

sec. 226(e) -----70 IBLA 313 (Jan. 28, 1983)
 72 IBLA 39 (Apr. 6, 1983)
 74 IBLA 228 (July 19, 1983)
 76 IBLA 380 (Oct. 25, 1983)
 77 IBLA 32 (Oct. 31, 1983)
 77 IBLA 164 (Nov. 17, 1983)
 226(f) -----70 IBLA 313 (Jan. 28, 1983)
 70 IBLA 354 (Feb. 3, 1983)
 71 IBLA 220 (Mar. 17, 1983)
 71 IBLA 237 (Mar. 18, 1983)
 74 IBLA 180 (July 18, 1983)
 74 IBLA 292 (July 27, 1983)
 226(j) -----71 IBLA 220 (Mar. 17, 1983)
 71 IBLA 224 (Mar. 17, 1983)
 77 IBLA 32 (Oct. 31, 1983)
 78 IBLA 102 (Dec. 20, 1983)
 226(k) -----A-26604, 90 I.D. 223 (1983)
 226-l(d) -----72 IBLA 39 (Apr. 6, 1983)
 241 -----73 IBLA 295 (June 7, 1983)
 78 IBLA 68 (Dec. 16, 1983)
 241(b) -----A-26604, 90 I.D. 223 (1983)
 261 -----73 IBLA 210 (May 27, 1983)
 76 IBLA 111 (Sept. 21, 1983)
 261-263 -----76 IBLA 111 (Sept. 21, 1983)
 262 -----73 IBLA 210 (May 27, 1983)
 76 IBLA 68 (Sept. 21, 1983)
 76 IBLA 111 (Sept. 21, 1983)
 281-287 -----71 IBLA 9 (Feb. 10, 1983)
 283 -----71 IBLA 9 (Feb. 10, 1983)
 351 -----73 IBLA 61 (May 12, 1983)
 73 IBLA 295 (June 7, 1983)
 74 IBLA 242 (July 19, 1983)
 74 IBLA 256 (July 22, 1983)
 351-359 -----70 IBLA 1 (Jan. 6, 1983)
 70 IBLA 154 (Jan. 18, 1983)
 70 IBLA 183, 90 I.D. 3 (1983)
 71 IBLA 187 (Mar. 10, 1983)
 71 IBLA 315 (Mar. 22, 1983)
 72 IBLA 248 (Apr. 27, 1983)
 72 IBLA 355 (Apr. 29, 1983)
 73 IBLA 73 (May 17, 1983)
 73 IBLA 250 (June 2, 1983)
 74 IBLA 12 (June 24, 1983)
 74 IBLA 242 (July 19, 1983)
 75 IBLA 290 (Aug. 26, 1983)
 77 IBLA 137 (Nov. 15, 1983)
 77 IBLA 144 (Nov. 15, 1983)
 351 et seq. -----70 IBLA 150 (Jan. 18, 1983)
 77 IBLA 137 (Nov. 15, 1983)
 352 -----71 IBLA 19 (Feb. 15, 1983)
 71 IBLA 187 (Mar. 10, 1983)
 72 IBLA 248 (Apr. 27, 1983)
 72 IBLA 355 (Apr. 29, 1983)
 73 IBLA 73 (May 17, 1983)
 73 IBLA 250 (June 2, 1983)
 73 IBLA 295 (June 7, 1983)
 73 IBLA 353 (June 14, 1983)
 74 IBLA 12 (June 24, 1983)
 74 IBLA 242 (July 19, 1983)
 75 IBLA 133 (Aug. 15, 1983)
 75 IBLA 183 (Aug. 22, 1983)
 75 IBLA 234 (Aug. 23, 1983)
 75 IBLA 290 (Aug. 26, 1983)
 76 IBLA 327 (Oct. 19, 1983)
 77 IBLA 126 (Nov. 15, 1983)
 77 IBLA 144 (Nov. 15, 1983)
 77 IBLA 376 (Dec. 7, 1983)
 354 -----74 IBLA 256 (July 22, 1983)
 359 -----74 IBLA 15 (June 24, 1983)
 521-531 -----A-26604, 90 I.D. 223 (1983)
 601 -----73 IBLA 128 (May 23, 1983)
 73 IBLA 165 (May 24, 1983)
 602 -----73 IBLA 165 (May 24, 1983)

TITLE 30: Continued

sec. 611 -----71 IBLA 178 (Mar. 10, 1983)
 78 IBLA 155 (Dec. 29, 1983)
 612 -----71 IBLA 268 (Mar. 22, 1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 612(b) -----75 IBLA 153, 90 I.D. 382 (1983)
 613 -----74 IBLA 56, 90 I.D. 262 (1983)
 76 IBLA 143 (Sept. 26, 1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 78 IBLA 112 (Dec. 22, 1983)
 615 -----78 IBLA 46, 90 I.D. 550 (1983)
 621 -----72 IBLA 48 (Apr. 12, 1983)
 75 IBLA 168 (Aug. 19, 1983)
 78 IBLA 81 (Dec. 16, 1983)
 621-625 -----74 IBLA 205 (July 18, 1983)
 78 IBLA 81 (Dec. 16, 1983)
 621(a) -----75 IBLA 168 (Aug. 19, 1983)
 77 IBLA 380 (Dec. 7, 1983)
 621(b) -----74 IBLA 205 (July 18, 1983)
 78 IBLA 81 (Dec. 16, 1983)
 623 -----78 IBLA 81 (Dec. 16, 1983)
 701 -----77 IBLA 266 (Nov. 30, 1983)
 702 -----77 IBLA 266 (Nov. 30, 1983)
 801 -----71 IBLA 96 (Feb. 24, 1983)
 818 -----75 IBLA 168 (Aug. 19, 1983)
 1001 -----70 IBLA 1 (Jan. 6, 1983)
 78 IBLA 128 (Dec. 29, 1983)
 78 IBLA 139 (Dec. 29, 1983)
 1001-1025 -----70 IBLA 65 (Jan. 10, 1983)
 1002 -----71 IBLA 371 (Mar. 28, 1983)
 1002-1003 -----70 IBLA 5 (Jan. 6, 1983)
 1003 -----70 IBLA 1 (Jan. 6, 1983)
 70 IBLA 221 (Jan. 24, 1983)
 1014(b) -----75 IBLA 125 (Aug. 15, 1983)
 1015 -----70 IBLA 221 (Jan. 24, 1983)
 1201 -----78 IBLA 27 (Dec. 13, 1983)
 1201-1328 -----73 IBLA 328 (June 8, 1983)
 74 IBLA 48 (June 28, 1983)
 74 IBLA 100 (June 30, 1983)
 74 IBLA 170 (July 13, 1983)
 76 IBLA 73, 90 I.D. 421 (1983)
 5 IBSMA 1, 90 I.D. 1 (1983)
 5 IBSMA 6, 90 I.D. 49 (1983)
 5 IBSMA 32, 90 I.D. 174 (1983)
 5 IBSMA 44, 90 I.D. 181 (1983)
 1201(c) -----5 IBSMA 32, 90 I.D. 174 (1983)
 1202(a) -----5 IBSMA 32, 90 I.D. 174 (1983)
 1232(a) -----72 IBLA 337 (Apr. 29, 1983)
 1252(d) -----77 IBLA 283, 90 I.D. 496 (1983)
 1253 -----77 IBLA 283, 90 I.D. 496 (1983)
 1265(b)(3) -----76 IBLA 129, 90 I.D. 425 (1983)
 1265(d)(2) -----76 IBLA 129, 90 I.D. 425 (1983)
 1265(e) -----76 IBLA 129, 90 I.D. 425 (1983)
 1267(c)(2) -----77 IBLA 283, 90 I.D. 496 (1983)
 1271 -----77 IBLA 283, 90 I.D. 496 (1983)
 1271(a)(1) -----77 IBLA 283, 90 I.D. 496 (1983)
 1271(a)(5) -----5 IBSMA 32, 90 I.D. 174 (1983)
 1272(e) -----76 IBLA 73, 90 I.D. 421 (1983)
 5 IBSMA 19, 90 I.D. 54 (1983)
 1272(e)(5) -----5 IBSMA 19, 90 I.D. 54 (1983)
 1275(b) -----78 IBLA 27 (Dec. 13, 1983)
 1277 -----74 IBLA 389 (July 29, 1983)
 1278 -----78 IBLA 27 (Dec. 13, 1983)
 1278(2) -----74 IBLA 170 (July 13, 1983)
 5 IBSMA 32, 90 I.D. 174 (1983)
 1291(2) -----76 IBLA 129, 90 I.D. 425 (1983)
 1291(28) -----76 IBLA 73, 90 I.D. 421 (1983)
 78 IBLA 27 (Dec. 13, 1983)

TITLE 33:

sec. 1251 -----75 IBLA 16, 90 I.D. 352 (1983)
 1251 et seq. -- M-36915 (Supp. I), 90 I.D. 255 (1983)
 1311 -----M-36915 (Supp. I), 90 I.D. 255 (1983)
 1344 -----M-36915 (Supp. I), 90 I.D. 255 (1983)
 1344(r) -----M-36915 (Supp. I), 90 I.D. 255 (1983)
 1362(14) -----72 IBLA 261, 90 I.D. 189 (1983)

TITLE 39:

sec. 101 -----76 IBLA 99 (Sept. 21, 1983)

TITLE 40:

sec. 771-792 -----76 IBLA 327 (Oct. 19, 1983)
 771 et seq. --76 IBLA 327 (Oct. 19, 1983)
 781 -----76 IBLA 327 (Oct. 19, 1983)

TITLE 41:

sec. 601-613 ----- IBCA-1576-5-82 (Jan. 31, 1983)
 IBCA-1591-6-82 & 1605-7-82,
 90 I.D. 41 (1983)
 IBCA-1346-4-80 (May 26, 1983)
 IBCA-1638-11-82, 90 I.D. 230 (1983)
 IBCA-1640-12-82, 90 I.D. 228 (1983)
 IBCA-1303-9-79, 90 I.D. 401 (1983)
 IBCA-1681-6-83 (Oct. 28, 1983)
 IBCA-1682-6-83, 90 I.D. 441 (1983)
 601 et seq. -- IBCA-1681-6-83 (Oct. 28, 1983)
 602 ----- IBCA-1640-12-82, 90 I.D. 228 (1983)
 602(a) ----- IBCA-1640-12-82, 90 I.D. 228 (1983)
 602(a)(2) ----- IBCA-1591-6-82 & 1605-7-82,
 90 I.D. 41 (1983)
 604 ----- IBCA-1303-9-79, 90 I.D. 401 (1983)
 605(a) ----- IBCA-1591-6-82 & 1605-7-82,
 90 I.D. 41 (1983)
 IBCA-1635-11-82 (June 7, 1983)
 IBCA-1536-3-82, 90 I.D. 297 (1983)
 605(b) ----- IBCA-1640-12-82, 90 I.D. 228 (1983)
 IBCA-1725-9-83 (Nov. 14, 1983)
 IBCA-1711-8-83, 90 I.D. 494 (1983)
 605(c) ----- IBCA-1681-6-83 (Oct. 28, 1983)
 605(c)(1) ----- IBCA-1511-9-81, 90 I.D. 491 (1983)
 606 ----- IBCA-1359-5-80, 90 I.D. 69 (1983)
 IBCA-1646-1-83, 90 I.D. 226 (1983)
 IBCA-1618-9-82 (Nov. 4, 1983)
 607(d) ----- IBCA-1640-12-82, 90 I.D. 228 (1983)
 609(d) ----- IBCA-1672-4-83, 90 I.D. 379 (1983)
 611 ----- IBCA-1635-11-82 (June 7, 1983)
 IBCA-1681-6-83 (Oct. 28, 1983)
 11 IBIA 285, 90 I.D. 389 (1983)

TITLE 42:

1988 -----11 IBIA 285, 90 I.D. 389 (1983)
 4321 -----70 IBLA 214 (Jan. 24, 1983)
 73 IBLA 226 (May 31, 1983)
 75 IBLA 380 (Aug. 31, 1983)
 4321-4361 -----11 IBIA 249, 90 I.D. 329 (1983)
 4321 et seq. -- M-36900 (Supp. I), 90 I.D. 345
 (1983)
 4331 -----72 IBLA 261, 90 I.D. 189 (1983)
 4332 -----75 IBLA 16, 90 I.D. 352 (1983)
 76 IBLA 83 (Sept. 21, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 4332(2)(c) -----73 IBLA 226 (May 31, 1983)
 4332(C) -----73 IBLA 39 (May 11, 1983)
 4332(C)(11) -----73 IBLA 39 (May 11, 1983)
 4601 -----5 OHA 96 (Feb. 25, 1983)
 4601-4655 -----5 OHA 143 (Aug. 19, 1983)
 5 OHA 168 (Sept. 15, 1983)
 4601-4666 -----5 OHA 224 (Nov. 7, 1983)
 4601(6) -----5 OHA 96 (Feb. 25, 1983)
 4622 -----5 OHA 87 (Feb. 9, 1983)
 5 OHA 201 (Oct. 4, 1983)
 4622(a) -----5 OHA 148 (Sept. 13, 1983)
 4622(a)(1) -----5 OHA 84 (Jan. 20, 1983)
 5 OHA 104 (Mar. 15, 1983)
 5 OHA 205 (Oct. 4, 1983)
 4622(a)(2) -----5 OHA 166 (Sept. 14, 1983)
 4622(c) -----5 OHA 87 (Feb. 9, 1983)
 5 OHA 93 (Feb. 14, 1983)
 5 OHA 212 (Oct. 21, 1983)
 4623 -----5 OHA 180 (Sept. 28, 1983)
 4623(a)(1)(B) - 5 OHA 221 (Nov. 3, 1983)

TITLE 42: Continued

sec. 4628 ----- 5 OHA 205 (Oct. 4, 1983)
 4631 ----- 5 OHA 205 (Oct. 4, 1983)
 4651(9) ----- 5 OHA 175 (Sept. 15, 1983)
 4652 ----- 5 OHA 148 (Sept. 13, 1983)
 5 OHA 166 (Sept. 14, 1983)
 6501-6507 ----- 78 IBLA 115 (Dec. 22, 1983)
 6508 ----- 78 IBLA 115 (Dec. 22, 1983)
 7254 ----- 73 IBLA 73 (May 17, 1983)

TITLE 43:

sec. 2 ----- 70 IBLA 75 (Jan. 11, 1983)
 21(i) ----- 75 IBLA 242 (Aug. 24, 1983)
 118(d) ----- 75 IBLA 40 (Aug. 5, 1983)
 141 ----- 70 IBLA 228 (Jan. 24, 1983)
 74 IBLA 295 (July 27, 1983)
 142 ----- 70 IBLA 228 (Jan. 24, 1983)
 161 ----- 75 IBLA 236 (Aug. 24, 1983)
 169 ----- 74 IBLA 373, 90 I.D. 338 (1983)
 170 ----- 74 IBLA 1 (June 21, 1983)
 185 ----- 74 IBLA 373, 90 I.D. 338 (1983)
 218 ----- 71 IBLA 109 (Feb. 28, 1983)
 226(c) ----- 71 IBLA 209 (Mar. 15, 1983)
 270 ----- 74 IBLA 373, 90 I.D. 338 (1983)
 270-1 ----- 72 IBLA 13 (Apr. 4, 1983)
 77 IBLA 130 (Nov. 15, 1983)
 270-1-270-3 -- 70 IBLA 369 (Feb. 3, 1983)
 71 IBLA 63 (Feb. 22, 1983)
 71 IBLA 394 (Mar. 30, 1983)
 72 IBLA 13 (Apr. 4, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 130 (Nov. 15, 1983)
 77 IBLA 321 (Dec. 1, 1983)
 77 IBLA 347 (Dec. 5, 1983)
 274 ----- 72 IBLA 197 (Apr. 19, 1983)
 291 ----- 76 IBLA 48 (Sept. 19, 1983)
 299 ----- 76 IBLA 276 (Oct. 18, 1983)
 78 IBLA 155 (Dec. 29, 1983)
 300 ----- M-36914 (Supp. II), 90 I.D. 81
 (1983)
 315 ----- 70 IBLA 348 (Feb. 3, 1983)
 71 IBLA 46 (Feb. 18, 1983)
 75 IBLA 44 (Aug. 5, 1983)
 75 IBLA 192 (Aug. 22, 1983)
 76 IBLA 17 (Sept. 6, 1983)
 76 IBLA 83 (Sept. 21, 1983)
 76 IBLA 170 (Sept. 30, 1983)
 315-315o-1 --- 75 IBLA 44 (Aug. 5, 1983)
 315 et seq. -- 70 IBLA 348 (Feb. 3, 1983)
 75 IBLA 301 (Aug. 39, 1983)
 315a ----- 71 IBLA 46 (Feb. 18, 1983)
 76 IBLA 170 (Sept. 30, 1983)
 315a-315r --- 70 IBLA 348 (Feb. 3, 1983)
 71 IBLA 46 (Feb. 18, 1983)
 75 IBLA 40 (Aug. 5, 1983)
 76 IBLA 170 (Sept. 30, 1983)
 315b ----- 75 IBLA 301 (Aug. 29, 1983)
 315f ----- 70 IBLA 126 (Jan. 13, 1983)
 71 IBLA 1 (Feb. 9, 1983)
 73 IBLA 82 (May 18, 1983)
 74 IBLA 20 (June 24, 1983)
 75 IBLA 192 (Aug. 22, 1983)
 76 IBLA 205 (Oct. 11, 1983)
 315m ----- 75 IBLA 301 (Aug. 29, 1983)
 315m-1-
 315m-4 --- 75 IBLA 44 (Aug. 5, 1983)
 321 ----- 73 IBLA 220 (May 27, 1983)
 75 IBLA 236 (Aug. 24, 1983)
 77 IBLA 325 (Dec. 5, 1983)
 321-339 ----- 73 IBLA 165 (May 24, 1983)
 74 IBLA 239 (July 19, 1983)
 322 ----- 73 IBLA 165 (May 24, 1983)
 75 IBLA 236 (Aug. 24, 1983)
 325 ----- 74 IBLA 239 (July 19, 1983)
 327 ----- 75 IBLA 236 (Aug. 24, 1983)
 328 ----- 75 IBLA 236 (Aug. 24, 1983)

TITLE 43: Continued

sec. 387 ----- 77 IBLA 137 (Nov. 15, 1983)
 415f ----- 70 IBLA 196 (Jan. 21, 1983)
 460q-5 ----- 74 IBLA 271 (July 25, 1983)
 621 ----- 77 IBLA 380 (Dec. 7, 1983)
 661 ----- 77 IBLA 80 (Nov. 9, 1983)
 682a ----- 72 IBLA 373 (May 4, 1983)
 73 IBLA 156 (May 24, 1983)
 73 IBLA 167 (May 24, 1983)
 74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)
 74 IBLA 350 (July 28, 1983)
 76 IBLA 20 (Sept. 6, 1983)
 682a-682e --- 73 IBLA 27 (May 9, 1983)
 74 IBLA 350 (July 28, 1983)
 687a ----- 70 IBLA 171 (Jan. 20, 1983)
 74 IBLA 295 (July 27, 1983)
 687a-687a-5 -- 74 IBLA 295 (July 27, 1983)
 687a-1 ----- 70 IBLA 171 (Jan. 20, 1983)
 74 IBLA 295 (July 27, 1983)
 77 IBLA 20 (Oct. 31, 1983)
 733 ----- 11 IBIA 155, 90 I.D. 165 (1983)
 751 ----- 70 IBLA 75 (Jan. 11, 1983)
 70 IBLA 383 (Feb. 8, 1983)
 752 ----- 70 IBLA 75 (Jan. 11, 1983)
 753 ----- 70 IBLA 75 (Jan. 11, 1983)
 772 ----- 77 IBLA 106 (Nov. 14, 1983)
 773 ----- 70 IBLA 75 (Jan. 11, 1983)
 869 ----- 71 IBLA 178 (Mar. 10, 1983)
 73 IBLA 82 (May 18, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 869-869-4 --- 77 IBLA 174 (Nov. 17, 1983)
 869-1 ----- 73 IBLA 82 (May 18, 1983)
 76 IBLA 301, 90 I.D. 464 (1983)
 77 IBLA 174 (Nov. 17, 1983)
 872 ----- 70 IBLA 46 (Jan. 10, 1983)
 75 IBLA 396 (Sept. 2, 1983)
 932 ----- 72 IBLA 125 (Apr. 18, 1983)
 74 IBLA 275 (July 25, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 946 ----- 77 IBLA 80 (Nov. 9, 1983)
 956 ----- 75 IBLA 153, 90 I.D. 382 (1983)
 77 IBLA 80 (Nov. 9, 1983)
 959 ----- 73 IBLA 199 (May 26, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 961 ----- 70 IBLA 39 (Jan. 10, 1983)
 71 IBLA 88 (Feb. 24, 1983)
 71 IBLA 352 (Mar. 28, 1983)
 77 IBLA 110 (Nov. 14, 1983)
 1068 ----- 70 IBLA 207 (Jan. 24, 1983)
 71 IBLA 160 (Mar. 10, 1983)
 74 IBLA 111 (June 30, 1983)
 75 IBLA 89 (Aug. 11, 1983)
 75 IBLA 212 (Aug. 23, 1983)
 75 IBLA 354 (Aug. 31, 1983)
 76 IBLA 143 (Sept. 26, 1983)
 77 IBLA 399 (Dec. 9, 1983)
 1068-1068a --- 74 IBLA 111 (June 30, 1983)
 1068-1068b --- IBCA-1606-7-82 (Oct. 19, 1983)
 1068a ----- 71 IBLA 160 (Mar. 10, 1983)
 75 IBLA 89 (Aug. 11, 1983)
 76 IBLA 143 (Sept. 26, 1983)
 1166 ----- 76 IBLA 301, 90 I.D. 464 (1983)
 1171 ----- 76 IBLA 192 (Oct. 6, 1983)
 1181a ----- 72 IBLA 261, 90 I.D. 189 (1983)
 75 IBLA 380 (Aug. 31, 1983)
 1181a-1181f -- 72 IBLA 261, 90 I.D. 189 (1983)
 78 IBLA 46, 90 I.D. 550 (1983)
 1181a-1181j -- 71 IBLA 67 (Feb. 22, 1983)
 1181f ----- 72 IBLA 261, 90 I.D. 189 (1983)
 1201 ----- 70 IBLA 75 (Jan. 11, 1983)
 1301-1343 ----- 78 IBLA 93 (Dec. 19, 1983)
 1313(a) ----- 74 IBLA 295 (July 27, 1983)
 1334(a) ----- 78 IBLA 93 (Dec. 19, 1983)
 1334(a)(1) --- 78 IBLA 93 (Dec. 19, 1983)
 1344(a)(1) --- 78 IBLA 93 (Dec. 19, 1983)
 1344(a)(4) --- 78 IBLA 93 (Dec. 19, 1983)

TITLE 43: Continued

sec. 1374 -----73 IBLA 308 (June 7, 1983)
 1377(b) -----78 IBLA 93 (Dec. 19, 1983)
 1411 -----76 IBLA 395 (Oct. 27, 1983)
 1411-1418 -----75 IBLA 168 (Aug. 19, 1983)
 1418 -----76 IBLA 395 (Oct. 27, 1983)
 1421-1427 -----73 IBLA 268 (June 7, 1983)
 76 IBLA 208 (Oct. 11, 1983)
 1423 -----76 IBLA 208 (Oct. 11, 1983)
 1424 -----73 IBLA 268 (June 7, 1983)
 76 IBLA 208 (Oct. 11, 1983)
 1457 -----11 IBLA 184, 90 I.D. 243 (1983)
 1464 -----72 IBLA 62 (Apr. 12, 1983)
 74 IBLA 52 (June 28, 1983)
 75 IBLA 55 (Aug. 5, 1983)
 1510 -----73 IBLA 108 (May 23, 1983)
 1601 -----70 IBLA 302 (Jan. 28, 1983)
 71 IBLA 318 (Mar. 23, 1983)
 72 IBLA 48 (Apr. 12, 1983)
 72 IBLA 218 (Apr. 25, 1983)
 73 IBLA 344 (June 10, 1983)
 75 IBLA 242 (Aug. 24, 1983)
 76 IBLA 103 (Sept. 21, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 20 (Oct. 31, 1983)
 1601-1627 -----75 IBLA 316 (Aug. 30, 1983)
 1601-1628 -----71 IBLA 39 (Feb. 16, 1983)
 72 IBLA 13 (Apr. 4, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 1601 et seq. --71 IBLA 394 (Mar. 30, 1983)
 1601(a) -----75 IBLA 316 (Aug. 30, 1983)
 1602(c) -----75 IBLA 316 (Aug. 30, 1983)
 1602(d) -----75 IBLA 316 (Aug. 30, 1983)
 1603(b) -----71 IBLA 318 (Mar. 23, 1983)
 1606 -----75 IBLA 316 (Aug. 30, 1983)
 1610 -----72 IBLA 387 (May 5, 1983)
 74 IBLA 364 (July 28, 1983)
 77 IBLA 316 (Nov. 30, 1983)
 77 IBLA 383, 90 I.D. 543 (1983)
 1610(a) -----70 IBLA 302 (Jan. 28, 1983)
 1610(a)(1)(A) --71 IBLA 63 (Feb. 22, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 1610(a)(3) -----75 IBLA 309 (Aug. 30, 1983)
 75 IBLA 316 (Aug. 30, 1983)
 77 IBLA 383, 90 I.D. 543 (1983)
 1610(b)(1) -----11 IBLA 155, 90 I.D. 165 (1983)
 1611 -----72 IBLA 218 (Apr. 25, 1983)
 73 IBLA 344 (June 10, 1983)
 75 IBLA 242 (Aug. 24, 1983)
 77 IBLA 20 (Oct. 31, 1983)
 77 IBLA 374 (Dec. 7, 1983)
 77 IBLA 383, 90 I.D. 543 (1983)
 1611(a) -----71 IBLA 256 (Mar. 21, 1983)
 75 IBLA 242 (Aug. 24, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 1611(c) -----77 IBLA 219 (Nov. 28, 1983)
 77 IBLA 383, 90 I.D. 543 (1983)
 1612(b) -----71 IBLA 318 (Mar. 23, 1983)
 1613 -----74 IBLA 139, 90 I.D. 289 (1983)
 74 IBLA 281 (July 25, 1983)
 75 IBLA 65 (Aug. 10, 1983)
 76 IBLA 103 (Sept. 21, 1983)
 77 IBLA 219 (Nov. 28, 1983)
 1613(a) -----73 IBLA 97 (May 23, 1983)
 74 IBLA 275 (July 25, 1983)
 1613(c) -----73 IBLA 344 (June 10, 1983)
 1613(c)(4) -----75 IBLA 242 (Aug. 24, 1983)
 1613(g) -----74 IBLA 139, 90 I.D. 289 (1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 1613(h) -----77 IBLA 383, 90 I.D. 543 (1983)
 1613(h)(1) -----77 IBLA 383, 90 I.D. 543 (1983)
 1613(h)(2) -----75 IBLA 316 (Aug. 30, 1983)
 1613(h)(3) -----74 IBLA 308 (July 27, 1983)

TITLE 43: Continued

sec. 1616 -----72 IBLA 387 (May 5, 1983)
 1616(b) -----71 IBLA 256 (Mar. 21, 1983)
 72 IBLA 218 (Apr. 25, 1983)
 74 IBLA 275 (July 25, 1983)
 74 IBLA 308 (July 27, 1983)
 77 IBLA 219 (Nov. 28, 1983)
 1616(b)(1) -----74 IBLA 275 (July 25, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 1616(b)(2) -----77 IBLA 219 (Nov. 28, 1983)
 77 IBLA 270 (Nov. 30, 1983)
 1616(b)(3) -----74 IBLA 275 (July 25, 1983)
 1616(d)(1) -----77 IBLA 181 (Nov. 18, 1983)
 1616(d)(2) -----72 IBLA 48 (Apr. 12, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 1616(d)(2)(C) --77 IBLA 181 (Nov. 18, 1983)
 1616(d)(2)(D) --77 IBLA 181 (Nov. 18, 1983)
 1617 -----70 IBLA 369 (Feb. 3, 1983)
 71 IBLA 63 (Feb. 22, 1983)
 71 IBLA 394 (Mar. 30, 1983)
 76 IBLA 264 (Oct. 18, 1983)
 77 IBLA 316 (Nov. 30, 1983)
 1617(a) -----71 IBLA 63 (Feb. 22, 1983)
 77 IBLA 347 (Dec. 5, 1983)
 1621 -----74 IBLA 364 (July 28, 1983)
 75 IBLA 65 (Aug. 10, 1983)
 77 IBLA 219 (Nov. 28, 1983)
 1621(c) -----74 IBLA 139, 90 I.D. 289 (1983)
 77 IBLA 270 (Nov. 30, 1983)
 1621(h) -----77 IBLA 383, 90 I.D. 543 (1983)
 1621(h)(1) -----72 IBLA 387 (May 5, 1983)
 1631(b) -----70 IBLA 302 (Jan. 28, 1983)
 71 IBLA 318 (Mar. 23, 1983)
 1634(a) -----77 IBLA 347 (Dec. 5, 1983)
 1634(a)(1) -----71 IBLA 63 (Feb. 22, 1983)
 77 IBLA 321 (Dec. 1, 1983)
 77 IBLA 321 (Dec. 1, 1983)
 1634(a)(4) -----71 IBLA 63 (Feb. 22, 1983)
 77 IBLA 321 (Dec. 1, 1983)
 77 IBLA 347 (Dec. 5, 1983)
 1634(a)(5)(B) --70 IBLA 369 (Feb. 3, 1983)
 1634(c) -----77 IBLA 347 (Dec. 5, 1983)
 1635(c) -----76 IBLA 264 (Oct. 18, 1983)
 1701 -----71 IBLA 165 (Mar. 10, 1983)
 73 IBLA 308 (June 7, 1983)
 75 IBLA 236 (Aug. 24, 1983)
 77 IBLA 110 (Nov. 14, 1983)
 77 IBLA 228 (Nov. 28, 1983)
 1701-1782 -----71 IBLA 88 (Feb. 24, 1983)
 71 IBLA 352 (Mar. 28, 1983)
 1701-1784 -----76 IBLA 48 (Sept. 19, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 78 IBLA 115 (Dec. 22, 1983)
 1701 et seq. --70 IBLA 348 (Feb. 3, 1983)
 75 IBLA 40 (Aug. 5, 1983)
 1701(a)(4) -----74 IBLA 20 (June 24, 1983)
 76 IBLA 205 (Oct. 11, 1983)
 1701(a)(5) -----75 IBLA 140 (Aug. 17, 1983)
 1701(a)(9) -----78 IBLA 115 (Dec. 22, 1983)
 1701(a)(12) -----77 IBLA 174 (Nov. 17, 1983)
 1701(b) -----75 IBLA 140 (Aug. 17, 1983)
 1702(a) -----75 IBLA 186 (Aug. 22, 1983)
 1702(e) -----75 IBLA 44 (Aug. 5, 1983)
 77 IBLA 144 (Nov. 15, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 1702(i) -----71 IBLA 165 (Mar. 10, 1983)
 1711 -----71 IBLA 100 (Feb. 24, 1983)
 76 IBLA 31 (Sept. 8, 1983)
 1711(a) -----71 IBLA 67 (Feb. 22, 1983)
 72 IBLA 100 (Apr. 14, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 78 IBLA 133 (Dec. 29, 1983)

United States Codes

TITLE 43: Continued

sec. 1712 -----71 IBLA 380 (Mar. 29, 1983)
 78 IBLA 115 (Dec. 22, 1983)
 1712(a) -----70 IBLA 214 (Jan. 24, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 1712(c)(3) -----75 IBLA 186 (Aug. 22, 1983)
 1712(f) -----70 IBLA 214 (Jan. 24, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 1713 -----72 IBLA 373 (May 4, 1983)
 73 IBLA 27 (May 9, 1983)
 73 IBLA 156 (May 24, 1983)
 74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)
 74 IBLA 350 (July 28, 1983)
 76 IBLA 20 (Sept. 6, 1983)
 76 IBLA 208 (Oct. 11, 1983)
 M-36900 (Supp. I), 90 I.D. 345
 (1983)
 1713(d) -----74 IBLA 4 (June 21, 1983)
 74 IBLA 285 (July 25, 1983)
 74 IBLA 350 (July 28, 1983)
 76 IBLA 20 (Sept. 6, 1983)
 1714 -----76 IBLA 383 (Oct. 27, 1983)
 77 IBLA 181 (Nov. 18, 1983)
 1714(b)(1) -----75 IBLA 16, 90 I.D. 352 (1983)
 1714(g) -----74 IBLA 1 (June 21, 1983)
 1716 -----70 IBLA 93 (Jan. 11, 1983)
 73 IBLA 320 (June 7, 1983)
 74 IBLA 350 (July 28, 1983)
 78 IBLA 68 (Dec. 16, 1983)
 1716(a) -----78 IBLA 68 (Dec. 16, 1983)
 1716(b) -----78 IBLA 68 (Dec. 16, 1983)
 1719(b) -----73 IBLA 92 (May 19, 1983)
 1719(b)(1) -----73 IBLA 92 (May 19, 1983)
 1732 -----71 IBLA 165 (Mar. 10, 1983)
 75 IBLA 278 (Aug. 26, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 77 IBLA 144 (Nov. 15, 1983)
 1732(b) -----70 IBLA 214 (Jan. 24, 1983)
 75 IBLA 153, 90 I.D. 382 (1983)
 75 IBLA 236 (Aug. 24, 1983)
 1733 -----75 IBLA 278 (Aug. 26, 1983)
 1734 -----71 IBLA 385 (Mar. 29, 1983)
 1734(c) -----73 IBLA 308 (June 7, 1983)
 1739(e) -----75 IBLA 140 (Aug. 17, 1983)
 1744 -----69 IBLA 368 (Jan. 3, 1983)
 69 IBLA 379 (Jan. 4, 1983)
 69 IBLA 382 (Jan. 4, 1983)
 69 IBLA 394 (Jan. 4, 1983)
 70 IBLA 1 (Jan. 6, 1983)
 70 IBLA 11 (Jan. 6, 1983)
 70 IBLA 14 (Jan. 6, 1983)
 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 33 (Jan. 7, 1983)
 70 IBLA 36 (Jan. 7, 1983)
 70 IBLA 42 (Jan. 10, 1983)
 70 IBLA 49 (Jan. 10, 1983)
 70 IBLA 55 (Jan. 10, 1983)
 70 IBLA 118 (Jan. 13, 1983)
 70 IBLA 122 (Jan. 13, 1983)
 70 IBLA 264, 90 I.D. 10 (1983)
 70 IBLA 283 (Jan. 26, 1983)
 71 IBLA 131 (Mar. 9, 1983)
 71 IBLA 324 (Mar. 23, 1983)
 71 IBLA 334 (Mar. 28, 1983)
 71 IBLA 368 (Mar. 28, 1983)
 71 IBLA 398 (Mar. 31, 1983)
 72 IBLA 26 (Apr. 5, 1983)
 72 IBLA 28 (Apr. 5, 1983)
 72 IBLA 30 (Apr. 5, 1983)
 72 IBLA 43 (Apr. 7, 1983)
 72 IBLA 48 (Apr. 12, 1983)
 72 IBLA 52 (Apr. 12, 1983)
 72 IBLA 75 (Apr. 12, 1983)
 72 IBLA 80 (Apr. 13, 1983)
 72 IBLA 232 (Apr. 26, 1983)

TITLE 43: Continued

sec. 1744: Cont'd 72 IBLA 319 (Apr. 28, 1983)
 72 IBLA 321 (Apr. 28, 1983)
 72 IBLA 324 (Apr. 28, 1983)
 72 IBLA 327 (Apr. 28, 1983)
 72 IBLA 364 (May 2, 1983)
 72 IBLA 383 (May 5, 1983)
 72 IBLA 387 (May 5, 1983)
 72 IBLA 395 (May 5, 1983)
 73 IBLA 1 (May 5, 1983)
 73 IBLA 4 (May 5, 1983)
 73 IBLA 6 (May 5, 1983)
 73 IBLA 10 (May 5, 1983)
 73 IBLA 13 (May 5, 1983)
 73 IBLA 16 (May 5, 1983)
 73 IBLA 52 (May 12, 1983)
 73 IBLA 78 (May 17, 1983)
 73 IBLA 104 (May 23, 1983)
 73 IBLA 108 (May 23, 1983)
 73 IBLA 117 (May 23, 1983)
 73 IBLA 142 (May 23, 1983)
 73 IBLA 145 (May 23, 1983)
 73 IBLA 167 (May 24, 1983)
 73 IBLA 171 (May 24, 1983)
 73 IBLA 190 (May 26, 1983)
 73 IBLA 195 (May 26, 1983)
 73 IBLA 207 (May 27, 1983)
 73 IBLA 270 (June 7, 1983)
 73 IBLA 274 (June 7, 1983)
 73 IBLA 277 (June 7, 1983)
 73 IBLA 280 (June 7, 1983)
 73 IBLA 284 (June 7, 1983)
 73 IBLA 311 (June 7, 1983)
 73 IBLA 315 (June 7, 1983)
 73 IBLA 336 (June 8, 1983)
 73 IBLA 374 (June 15, 1983)
 73 IBLA 383 (June 15, 1983)
 73 IBLA 386 (June 15, 1983)
 73 IBLA 390 (June 15, 1983)
 73 IBLA 398 (June 15, 1983)
 74 IBLA 139, 90 I.D. 289 (1983)
 74 IBLA 153 (July 12, 1983)
 74 IBLA 156 (July 12, 1983)
 74 IBLA 163 (July 12, 1983)
 74 IBLA 167 (July 12, 1983)
 74 IBLA 201 (July 18, 1983)
 74 IBLA 210 (July 18, 1983)
 74 IBLA 213 (July 18, 1983)
 74 IBLA 217 (July 18, 1983)
 74 IBLA 221 (July 18, 1983)
 74 IBLA 223 (July 18, 1983)
 74 IBLA 226 (July 18, 1983)
 74 IBLA 231 (July 19, 1983)
 74 IBLA 281 (July 25, 1983)
 74 IBLA 320 (July 28, 1983)
 74 IBLA 367 (July 28, 1983)
 74 IBLA 397 (Aug. 2, 1983)
 75 IBLA 1 (Aug. 2, 1983)
 75 IBLA 57 (Aug. 5, 1983)
 75 IBLA 62 (Aug. 5, 1983)
 75 IBLA 65 (Aug. 10, 1983)
 75 IBLA 71 (Aug. 10, 1983)
 75 IBLA 74 (Aug. 10, 1983)
 75 IBLA 76 (Aug. 10, 1983)
 75 IBLA 80 (Aug. 10, 1983)
 75 IBLA 100 (Aug. 11, 1983)
 75 IBLA 104 (Aug. 11, 1983)
 75 IBLA 110 (Aug. 11, 1983)
 75 IBLA 146 (Aug. 17, 1983)
 75 IBLA 149 (Aug. 18, 1983)
 75 IBLA 174 (Aug. 19, 1983)
 75 IBLA 176 (Aug. 19, 1983)
 75 IBLA 262 (Aug. 26, 1983)
 75 IBLA 266 (Aug. 26, 1983)
 75 IBLA 269 (Aug. 26, 1983)
 75 IBLA 272 (Aug. 26, 1983)
 75 IBLA 275 (Aug. 26, 1983)

TITLE 43: Continued

sec. 1744: Cont'd

75 IBLA 309 (Aug. 30, 1983)
 75 IBLA 323 (Aug. 30, 1983)
 75 IBLA 325 (Aug. 30, 1983)
 75 IBLA 332 (Aug. 30, 1983)
 75 IBLA 335 (Aug. 30, 1983)
 75 IBLA 339 (Aug. 30, 1983)
 75 IBLA 346 (Aug. 31, 1983)
 75 IBLA 354 (Aug. 31, 1983)
 75 IBLA 358 (Aug. 31, 1983)
 76 IBLA 8 (Sept. 6, 1983)
 76 IBLA 11 (Sept. 6, 1983)
 76 IBLA 14 (Sept. 6, 1983)
 76 IBLA 53 (Sept. 19, 1983)
 76 IBLA 80 (Sept. 21, 1983)
 76 IBLA 90 (Sept. 21, 1983)
 76 IBLA 93 (Sept. 21, 1983)
 76 IBLA 96 (Sept. 21, 1983)
 76 IBLA 99 (Sept. 21, 1983)
 76 IBLA 107 (Sept. 21, 1983)
 76 IBLA 148 (Sept. 26, 1983)
 76 IBLA 180 (Oct. 3, 1983)
 76 IBLA 183 (Oct. 3, 1983)
 76 IBLA 188 (Oct. 6, 1983)
 76 IBLA 215 (Oct. 17, 1983)
 76 IBLA 218 (Oct. 17, 1983)
 76 IBLA 221 (Oct. 17, 1983)
 76 IBLA 224 (Oct. 17, 1983)
 76 IBLA 228 (Oct. 17, 1983)
 76 IBLA 231 (Oct. 17, 1983)
 76 IBLA 234 (Oct. 17, 1983)
 76 IBLA 236 (Oct. 17, 1983)
 76 IBLA 254 (Oct. 17, 1983)
 76 IBLA 257 (Oct. 17, 1983)
 76 IBLA 280 (Oct. 18, 1983)
 76 IBLA 357 (Oct. 24, 1983)
 76 IBLA 362 (Oct. 24, 1983)
 77 IBLA 1 (Oct. 31, 1983)
 77 IBLA 30 (Oct. 31, 1983)
 77 IBLA 152 (Nov. 16, 1983)
 77 IBLA 154 (Nov. 16, 1983)
 77 IBLA 156 (Nov. 16, 1983)
 77 IBLA 226 (Nov. 28, 1983)
 77 IBLA 235 (Nov. 29, 1983)
 77 IBLA 239 (Nov. 29, 1983)
 77 IBLA 328 (Dec. 5, 1983)
 77 IBLA 366 (Dec. 7, 1983)
 78 IBLA 112 (Dec. 22, 1983)
 1744(a) ----- 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 59 (Jan. 10, 1983)
 71 IBLA 324 (Mar. 23, 1983)
 71 IBLA 402 (Mar. 31, 1983)
 73 IBLA 52 (May 12, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 1744(a)(1) ----- 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 59 (Jan. 10, 1983)
 1744(a)(2) ----- 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 59 (Jan. 10, 1983)
 1744(b) ----- 72 IBLA 197 (Apr. 19, 1983)
 72 IBLA 223 (Apr. 26, 1983)
 72 IBLA 319 (Apr. 28, 1983)
 73 IBLA 171 (May 24, 1983)
 74 IBLA 167 (July 12, 1983)
 75 IBLA 168 (Aug. 19, 1983)
 76 IBLA 280 (Oct. 18, 1983)
 76 IBLA 362 (Oct. 24, 1983)
 77 IBLA 174 (Nov. 17, 1983)
 77 IBLA 366 (Dec. 7, 1983)
 1744(c) ----- 69 IBLA 368 (Jan. 3, 1983)
 69 IBLA 382 (Jan. 4, 1983)
 70 IBLA 11 (Jan. 6, 1983)
 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 55 (Jan. 10, 1983)
 70 IBLA 59 (Jan. 10, 1983)

TITLE 43: Continued

sec. 1744(c): Cnt'd

71 IBLA 131 (Mar. 9, 1983)
 71 IBLA 402 (Mar. 31, 1983)
 72 IBLA 30 (Apr. 5, 1983)
 72 IBLA 197 (Apr. 19, 1983)
 72 IBLA 364 (May 2, 1983)
 75 IBLA 309 (Aug. 30, 1983)
 76 IBLA 236 (Oct. 17, 1983)
 1745 ----- 70 IBLA 46 (Jan. 10, 1983)
 75 IBLA 388 (Sept. 2, 1983)
 1751-1753 ----- 71 IBLA 46 (Feb. 18, 1983)
 76 IBLA 170 (Sept. 30, 1983)
 1752 ----- 72 IBLA 62 (Apr. 12, 1983)
 1752(c) ----- 75 IBLA 44 (Aug. 5, 1983)
 1752(h) ----- 75 IBLA 44 (Aug. 5, 1983)
 1761 ----- 71 IBLA 380 (Mar. 29, 1983)
 75 IBLA 115 (Aug. 15, 1983)
 M-36900 (Supp. I), 90 I.D. 345 (1983)
 1761-1770 ----- 75 IBLA 115 (Aug. 15, 1983)
 1761-1771 ----- 70 IBLA 39 (Jan. 10, 1983)
 76 IBLA 283 (Oct. 18, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 1761 et seq. -- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1761(a) ----- 76 IBLA 45 (Sept. 19, 1983)
 M-36900 (Supp. I), 90 I.D. 345 (1983)
 1761(a)(4) ----- 71 IBLA 213 (Mar. 16, 1983)
 1761(b) ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1761(b)(1) ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1762 ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1763 ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1764 ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1764(c) ----- 75 IBLA 115 (Aug. 15, 1983)
 1764(e) ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1764(g) ----- 71 IBLA 213 (Mar. 16, 1983)
 76 IBLA 283 (Oct. 18, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 1764(j) ----- M-36900 (Supp. I), 90 I.D. 345 (1983)
 1765 ----- 75 IBLA 115 (Aug. 15, 1983)
 M-36900 (Supp. I), 90 I.D. 345 (1983)
 1766 ----- 75 IBLA 115 (Aug. 15, 1983)
 1769 ----- 71 IBLA 88 (Feb. 24, 1983)
 1769(a) ----- 71 IBLA 88 (Feb. 24, 1983)
 71 IBLA 352 (Mar. 28, 1983)
 77 IBLA 80 (Nov. 9, 1983)
 1770(a) ----- 75 IBLA 115 (Aug. 15, 1983)
 1782 ----- 71 IBLA 100 (Feb. 24, 1983)
 71 IBLA 153, 90 I.D. 84 (1983)
 71 IBLA 165 (Mar. 10, 1983)
 73 IBLA 266 (May 31, 1983)
 74 IBLA 106 (June 30, 1983)
 75 IBLA 140 (Aug. 17, 1983)
 75 IBLA 278 (Aug. 26, 1983)
 76 IBLA 31 (Sept. 8, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 76 IBLA 245 (Oct. 17, 1983)
 76 IBLA 383 (Oct. 27, 1983)
 78 IBLA 115 (Dec. 22, 1983)
 1782(a) ----- 70 IBLA 259 (Jan. 26, 1983)
 71 IBLA 4 (Feb. 10, 1983)
 71 IBLA 67 (Feb. 22, 1983)
 71 IBLA 100 (Feb. 24, 1983)
 71 IBLA 112 (Feb. 28, 1983)
 71 IBLA 153, 90 I.D. 84 (1983)

TITLE 43: Continued

sec. 1744(a): Cnt'd 71 IBLA 165 (Mar. 10, 1983)
 71 IBLA 172 (Mar. 10, 1983)
 72 IBLA 1 (Apr. 4, 1983)
 72 IBLA 100 (Apr. 14, 1983)
 72 IBLA 125 (Apr. 18, 1983)
 73 IBLA 226 (May 31, 1983)
 75 IBLA 163 (Aug. 18, 1983)
 75 IBLA 186 (Aug. 22, 1983)
 75 IBLA 220 (Aug. 23, 1983)
 75 IBLA 256 (Aug. 26, 1983)
 76 IBLA 23 (Sept. 8, 1983)
 76 IBLA 27 (Sept. 8, 1983)
 76 IBLA 31 (Sept. 8, 1983)
 76 IBLA 116 (Sept. 21, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 78 IBLA 133 (Dec. 29, 1983)
 1782(b) ----- 71 IBLA 112 (Feb. 28, 1983)
 72 IBLA 100 (Apr. 14, 1983)
 72 IBLA 125 (Apr. 18, 1983)
 75 IBLA 220 (Aug. 23, 1983)
 75 IBLA 256 (Aug. 26, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 78 IBLA 133 (Dec. 29, 1983)
 1782(c) ----- 71 IBLA 100 (Feb. 24, 1983)
 71 IBLA 153, 90 I.D. 84 (1983)
 71 IBLA 165 (Mar. 10, 1983)
 72 IBLA 1 (Apr. 4, 1983)
 73 IBLA 39 (May 11, 1983)
 73 IBLA 226 (May 31, 1983)
 74 IBLA 106 (June 30, 1983)
 76 IBLA 245 (Oct. 17, 1983)
 77 IBLA 330 (Dec. 5, 1983)
 4622(a) ----- 5 OHA 93 (Feb. 14, 1983)

TITLE 44:

sec. 35 ----- 73 IBLA 291 (June 7, 1983)
 1507 ----- 70 IBLA 25 (Jan. 6, 1983)
 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 59 (Jan. 10, 1983)
 70 IBLA 115 (Jan. 13, 1983)
 71 IBLA 368 (Mar. 28, 1983)
 72 IBLA 83 (Apr. 13, 1983)
 72 IBLA 232 (Apr. 26, 1983)
 72 IBLA 383 (May 5, 1983)
 72 IBLA 395 (May 5, 1983)
 73 IBLA 67 (May 16, 1983)
 73 IBLA 108 (May 23, 1983)
 73 IBLA 280 (June 7, 1983)
 73 IBLA 311 (June 7, 1983)
 73 IBLA 381 (June 15, 1983)
 73 IBLA 383 (June 15, 1983)

TITLE 44: Continued

sec. 1507: Cont'd 74 IBLA 31 (June 24, 1983)
 74 IBLA 163 (July 12, 1983)
 74 IBLA 210 (July 18, 1983)
 74 IBLA 217 (July 18, 1983)
 74 IBLA 234 (July 19, 1983)
 74 IBLA 320 (July 28, 1983)
 75 IBLA 76 (Aug. 10, 1983)
 75 IBLA 133 (Aug. 15, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 76 IBLA 292 (Oct. 18, 1983)
 76 IBLA 364 (Oct. 25, 1983)
 77 IBLA 24 (Oct. 31, 1983)
 1510 ----- 70 IBLA 25 (Jan. 6, 1983)
 70 IBLA 29 (Jan. 6, 1983)
 70 IBLA 59 (Jan. 10, 1983)
 70 IBLA 115 (Jan. 13, 1983)
 71 IBLA 368 (Mar. 28, 1983)
 72 IBLA 83 (Apr. 13, 1983)
 72 IBLA 232 (Apr. 26, 1983)
 72 IBLA 383 (May 5, 1983)
 72 IBLA 395 (May 5, 1983)
 73 IBLA 67 (May 16, 1983)
 73 IBLA 280 (June 7, 1983)
 73 IBLA 311 (June 7, 1983)
 73 IBLA 381 (June 15, 1983)
 73 IBLA 383 (June 15, 1983)
 74 IBLA 31 (June 24, 1983)
 74 IBLA 163 (July 12, 1983)
 74 IBLA 210 (July 18, 1983)
 74 IBLA 217 (July 18, 1983)
 74 IBLA 234 (July 19, 1983)
 74 IBLA 320 (July 28, 1983)
 75 IBLA 76 (Aug. 10, 1983)
 75 IBLA 133 (Aug. 15, 1983)
 75 IBLA 195 (Aug. 22, 1983)
 76 IBLA 292 (Oct. 18, 1983)
 76 IBLA 364 (Oct. 25, 1983)
 77 IBLA 24 (Oct. 31, 1983)
 3501 ----- 75 IBLA 298 (Aug. 29, 1983)

TITLE 48:

sec. 355a ----- 11 IBIA 155, 90 I.D. 165 (1983)
 355a-355e ----- 11 IBIA 155, 90 I.D. 165 (1983)
 357 ----- 77 IBLA 130 (Nov. 15, 1983)
 371 ----- 77 IBLA 347 (Dec. 5, 1983)
 372 ----- 77 IBLA 347 (Dec. 5, 1983)
 411 ----- 77 IBLA 347 (Dec. 5, 1983)

TITLE 49:

sec. 65(b) ----- 72 IBLA 197 (Apr. 19, 1983)

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ACCOUNTS

(See also Fees, Funds, Payments--if included in this Index.)

GENERALLY

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

PAYMENTS

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth R. Lewis, 70 IBLA 112 (Jan. 13, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

ACCOUNTS--Continued**PAYMENTS--Continued**

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Emmons, 76 IBLA 262 (Oct. 17, 1983)

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that ELM can credit payment to the proper lease account. Where the lessee shows that the payment was received and ELM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

Nucorp Energy, Inc., 73 IBLA 101 (May 23, 1983)

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

REFUNDS

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lease was deficient in the first year's rental, which deficiency was not timely cured, the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1734 (1976), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease or there are no other factors militating against repayment.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

An offeror for a noncompetitive oil and gas lease, filing over-the-counter, is not entitled to a refund of the filing fee even though she withdraws the offer prior to issuance of the lease.

Marie W. Sutc, 73 IBLA 61 (May 12, 1983)

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304 (c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734 (c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden R. Graver, John R. Schumacher, 73 IBLA 308 (June 7, 1983)

ACCOUNTS--ContinuedREFUNDS--Continued

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

ACCRETION

(See also Boundaries, Public Lands--if included in this Index.)

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

Where an oil and gas lease offer is rejected based on the conclusion that the land sculped evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Province, 78 IBLA 85 (Dec. 16, 1983)

ACT OF JULY 26, 1866

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

ACT OF JULY 27, 1866

Where there is a deficiency of indemnity land to satisfy losses in place land, the right of a railroad vests to select indemnity under a grant in aid of construction. That right can be conveyed to an innocent purchaser for value and is not affected by a subsequent release filed pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

A railroad's right to select indemnity land under the Act of July 27, 1866, which had vested, was a claim which was required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present a claim

ACT OF JULY 27, 1866--Continued

within the time established by the Act barred acquisition of lands. A list of innocent purchasers for value filed with the Department in 1940 pursuant to sec. 321(b) of the Transportation Act, 49 U.S.C. § 65(b) (1976), did not constitute compliance with the 1955 recodification requirement.

Santa Fe Pacific Railroad Co., 72 IELA 197 (Apr. 19, 1983)

ACT OF MAY 17, 1884

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was inoperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Pan Alaska Fisheries, Inc., 74 IELA 295 (July 27, 1983)

ACT OF FEBRUARY 8, 1887

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudie Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

ACT OF AUGUST 4, 1892

Under the provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), a person authorized to enter lands under the mining laws of the United States may enter lands chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.

Frank Melluzzo, 71 IELA 178 (Mar. 10, 1983)

ACT OF MAY 17, 1906

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Aleknagik, May M. Clsco, Lawrence Murphy, Sr., 77 IELA 130 (Nov. 15, 1983)

ACT OF JUNE 25, 1910

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there

ACT OF JUNE 25, 1910--Continued

has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Grooms, 70 IBLA 228 (Jan. 24, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

ACT OF APRIL 28, 1930

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

O. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

ACT OF APRIL 29, 1950

The Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), requires a notice of location to be filed with BLM within 90 days from initiation of a trade and manufacturing site claim. Unless such notice is filed in the proper BLM office within the time prescribed, no credit may be given for occupancy before such filing.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

ACT OF AUGUST 11, 1955

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Ronald E. McLean, 77 IBLA 380 (Dec. 7, 1983)

ACT OF JULY 6, 1960

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

E. K. Herndon, 76 IBLA 353 (Oct. 24, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

ACT OF JULY 6, 1960--Continued

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

O. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

ACT OF OCTOBER 15, 1966

Where the evidence establishes that BLM failed to conduct a cultural resource inventory in conformity with the applicable rules and regulations prior to offering timber for sale, BLM will be required to conduct a complete and proper cultural resource inventory before entry onto the land for harvesting is permitted.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

ACT OF OCTOBER 1, 1968

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

ADMINISTRATIVE AUTHORITY

(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The authority of the United States to enforce a public right or protect a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

BLM may not act to approve or disapprove the assignment of an oil and gas lease where the assignor's legal guardian has revoked the power of attorney pursuant to which the assignment was executed and has requested BLM to disapprove the assignment, as any action would be contrary to established Departmental policy to maintain the status quo of the lease where there is evidence of a private dispute or controversy concerning the validity of the assignment.

Spectrum Oil & Gas Co., 73 IBLA 162 (May 24, 1983)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Inexo Oil Co., 74 IBLA 260 (July 22, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, F.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Earnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.L. 10

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized officer which results in a misrepresentation of fact upon which there is detrimental reliance. Unless a wrong was consciously committed, the failure to correct a misunderstanding is insufficient grounds for estoppel.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

ADMINISTRATIVE AUTHORITY--Continued

LACHES--Continued

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983)
90 I.L. 432

ADMINISTRATIVE PRACTICE

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James M. Chudnow, 70 IBLA 150 (Jan. 18, 1983)

The public is properly included in formulation of resource and land management plans under the directive of the Federal Land Policy and Management Act of 1976, but such public participation is not mandatory for the discretionary issuance of a special use permit which accords with the prevailing management plan for the public lands involved.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Furney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony C. Brien, 77 IBLA 154 (Nov. 16, 1983)

ADMINISTRATIVE PRACTICE--Continued

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

It was improper to disqualify a first-drawn applicant in the simultaneous oil and gas leasing program because his agent's check in a previous drawing was returned as uncollectible, since under the applicable regulations the check in question should not have been deposited by the Bureau of Land Management.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and data and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it.

Roger K. Ogden, 77 IBLA 4 (Oct. 31, 1983) 90 I.D. 481

ADMINISTRATIVE PRACTICE--Continued

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

In the absence of specific rules governing reevaluation of an Indian school construction funding application, the Bureau of Indian Affairs will be held to the rules governing the initial evaluation of such an application, in order to avoid the appearance and reality of arbitrary, ad hoc decisionmaking.

Although true ex parte communications are the antithesis of reasoned, informed, and objective decisionmaking, the circumstances of this case do not permit a finding that the proceeding before the Bureau of Indian Affairs was impermissibly tainted by ex parte communications.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IEIA 80 (Dec. 7, 1983) 90 I.D. 521

ADMINISTRATIVE PROCEDURE

(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)

GENERALLY

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

The Board of Indian Appeals will dismiss as moot any case in which no controversy remains between the parties.

Edmond H. Burns, Mark Harmons v. Anadarko Area Director, Bureau of Indian Affairs, 11 IBIA 40 (Jan. 14, 1983)

So long as a departure from prior practice is clearly explained and shown to be neither arbitrary nor capricious, the Department has full authority to correct prior erroneous interpretations of law.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Offer of Settlement), 11 IFIA 226 (July 5, 1983)

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Where documents sent to a prospective oil and gas lease offeror are returned because the addressee has moved, and, on appeal from a rejection of his application for failure to submit an offer and tender the first year's rental, the applicant establishes that he had left a current forwarding address with the postal authorities, the provisions of 43 CFR 181C.2(b) relating to constructive receipt do not apply, and the rejection of the application will be reversed.

L. Lee Horschman, 74 IBLA 360 (July 28, 1983)

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

ADJUDICATION

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Benqoa, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Rayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IELA 117 (June 30, 1983)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

Although true ex parte communications are the antithesis of reasoned, informed, and objective decisionmaking, the circumstances of this case do not permit a finding that the proceeding before the Bureau of Indian Affairs was impermissibly tainted by ex parte communications.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

ADMINISTRATIVE LAW JUDGES

When the Board of Indian Appeals finds that the decision in an appeal requires further extensive analysis of Federal and state law, the case will be remanded or referred to an Administrative Law Judge familiar with the legal issues.

Estate of James Wemy Pukah, 11 IBIA 237 (July 6, 1983)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(h) (1976).

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

Secs. 102(a)(5), 202(a), 202(f), and 309(e) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(5), 1712(a), 1712(f), and 1739(e) (1976), do not require that the policy and procedural clarifications of the Wilderness Inventory Handbook as expressed in CAD 78-61, Changes 2 and 3, be subject to public notice and review. OAD 78-61, Changes 2 and 3, are within the exception of sec. 4(a) of the Administrative Procedure Act, 5 U.S.C. § 553 (1976), providing that interpretative rules, general statements of policy, or rules of agency organization procedure, or practice are not required to be promulgated as formal regulations.

Red Rock 4-Wheelers, 75 IELA 140 (Aug. 17, 1983)

ADMINISTRATIVE REVIEW

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry M. Fritchard, 70 IELA 154 (Jan. 18, 1983)

The issuance of special use permits is discretionary, and PLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdocr Recreation Ass'n, Inc., 70 IELA 214 (Jan. 24, 1983)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

Decisions made by officials of the Bureau of Indian Affairs as supervisors of Indian leases will be upheld when they are reasonable and based upon substantial evidence in the record. Where the Board finds that BIA has calculated damages improperly or in

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

violation of contractual or regulatory requirements, the agency's action will be set aside.

Walch Logging Co., Inc., Dant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.E. 88

The characterization of a decision as discretionary rather than based upon an interpretation of law is a legal conclusion reached through legal analysis. The determination of whether a decision is properly characterized as discretionary is within the Board's review jurisdiction.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (Apr. 1, 1983)

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBIA 39 (May 11, 1983)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBIA 27 (Sept. 8, 1983)

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Jack R. & Ruth V. Niece, 77 IBIA 205 (Nov. 22, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Administrative review is intended to provide the reality as well as the appearance of an objective and impartial reexamination of the law and discretion applied initially by a subordinate agency official.

Without definite proof to the contrary, the Board of Indian Appeals must assume that, in affirming a decision of a Bureau of Indian Affairs field official, the Assistant Secretary for Indian Affairs made an objective and impartial review of the decision and was convinced of the correctness of that position.

A decision by the Bureau of Indian Affairs that is not supported by the record will not be upheld. In appropriate circumstances, the matter will be referred for an evidentiary hearing and recommended decision.

Public of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.E. 521

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

The burden is on the applicant to prove entitlement to statutory or regulatory exemptions.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Under the provisions of 43 CFR 4.242(h), the burden of proving entitlement to reopening in Indian probate proceedings lies with the petitioner.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where ELM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that ELM received the documents.

Herbert Clark, 73 IELA 195 (May 26, 1983)

Wayne M. Hunt, 73 IELA 315 (June 7, 1983)

Devon M. Hurst, 75 IELA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IELA 262 (Aug. 26, 1983)

Homer Owens, 75 IELA 335 (Aug. 30, 1983)

Petty E. Baxter, 76 IELA 188 (Oct. 6, 1983)

Ralph Kubinski, 76 IELA 224 (Oct. 17, 1983)

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pool et al., 74 IELA 37 (June 27, 1983)

The burden of proving the error of an initial Departmental Indian probate decision is on the party challenging the decision.

Larry E. Ruff v. Area Director, Portland Area Office, Bureau of Indian Affairs, 11 IBIA 267 (Aug. 8, 1983)

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IELA 209 (Aug. 22, 1983)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Norman Montgomery et al., 75 IELA 358 (Aug. 31, 1983)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

When the Bureau of Indian Affairs seeks a determination that a prior decision of the Board of Indian Appeals is erroneous and should be overruled, it bears the burden of proving the error.

Seattle Indian Center v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 67 (Dec. 5, 1983) 90 I.D. 515

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Speculation or presumptions concerning an individual's circumstances are insufficient to support a finding under 25 CFR 20.21(a) that the individual is not eligible for receipt of general assistance from the Bureau of Indian Affairs on the grounds that his or her needs are met by other resources.

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983) 90 I.D. 539

DECISIONS

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

ADMINISTRATIVE PROCEDURE--ContinuedDECISIONS--Continued

Final decisions and orders of the Department of the Interior made in the adjudication of cases, including Indian Child Welfare Act cases, are both available to the public and indexed in accordance with the requirements of 5 U.S.C. § 552(a) (2) (1976).

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

HEARINGS

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arto, 70 IBIA 244 (Jan. 25, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

Kern Co. Drilling Co., et al., 71 IBIA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBIA 366 (Dec. 7, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBIA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing.

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Coreland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 413C.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

Notice of a hearing is not defective when notice was sent to the appellant at his last known address more than a month before the hearing, the letter was not returned, testimony of other individuals attending the hearing showed that appellant knew of the hearing, and appellant's notice of appeal shows on its face that he knew of the hearing.

Estate of Andrew Jackson, 12 IFIA 39 (Oct. 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

RULEMAKING

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(b) (1976).

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

SUBSTANTIAL EVIDENCE

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

ADMINISTRATIVE PROCEDURE--Continued

SUBSTANTIAL EVIDENCE--Continued

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Ltd., Inc., et al., 74 IBLA 117 (June 30, 1983)

The Board of Indian Appeals will not disturb an Administrative Law Judge's finding of fact that is supported by substantial evidence in the record.

Sam Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Fueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.T. 521

AGENCY

Under the doctrine of respondeat superior a corporation is liable for the wrongful acts or commissions of its officers, agents, or employees acting within the scope of their authority or in the course of their employment.

The master/servant relationship and the liability of the master for the acts of the servant are determined by the law of the state in which the act took place. In Idaho, a principal or master can be held liable for exemplary or punitive damages based on the wrongful acts of its agent only when the agent's acts were authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment, or when the acts have subsequently been ratified with full knowledge of the facts.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

ALASKA

GENERALLY

Formal ceremonial transfer of Alaska to the United States took place, pursuant to the treaty of Mar. 30, 1867, on Oct. 18, 1867, and accordingly certificates issued in 1868 by the "Late Governor--Russian Colonies in America" were ineffective to pass title to land since that title had already vested in the United States.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

ALASKA--Continued

GENERALLY--Continued

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c) (4) (Supp. V 1981).

Chefarnmute, Inc., 75 IBLA 242 (Aug. 24, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

COAL LEASES AND PERMITS

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 103 (Sept. 21, 1983)

GRAZING

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the

ALASKA--Continued

GRAZING--Continued

grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Henrietta Roberts Vaden, 70 IBLA 171 (Jan. 20, 1983)

LAND GRANTS AND SELECTIONS

Generally

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

MINING CLAIMS

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.450 as provided in 43 CFR 2650.3-2(a).

The Bureau of Land Management is not required to search state record offices for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and obviates the need for the Bureau of Land Management to search state records.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., MINT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

NATIVE ALLOTMENTS

An Alaska Native allotment application qualifies for approval under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), where it was pending

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

before the Department on or before Dec. 18, 1971, and described unreserved land. Subsec. (a)(4) of that section requiring adjudication of such application pursuant to the Alaska Native Allotment Act, 43 U.S.C. § 270-1 through 270-3 (1970) if the land in the application is included in a state selection, does not apply where the state selection was not filed on or before Dec. 18, 1971.

State of Alaska, Matrona Johnson, 71 IBLA 63 (Feb. 22, 1983)

The filing of an acceptable application for a Native allotment segregates the lands from appropriation and subsequent conflicting applications must be rejected.

State of Alaska, 71 IBLA 394 (Mar. 30, 1983)

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983)

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970).

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

The Department of the Interior is authorized to approve only Native allotment applications that were pending before the Department on or before Dec. 18, 1971. Where the evidence shows that an application was delivered to the Bureau of Indian Affairs before that date but was not transmitted to the Bureau of Land Management until after that date, the application was timely. Where there are factual questions concerning the pendency of an application they must be resolved at a hearing.

A Native allotment application was pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. The Bureau of Land Management is the proper agency to adjudicate all Native allotment applications, however.

An inheritable property right in an allotment is created only if an applicant fully complies with the requirements of the Native Allotment Act before his or her death. When an applicant has submitted evidence of the required use and occupancy of the allotment that is disputed during adjudication of the application, the applicant's heirs may properly submit additional evidence to support the applicant's claims.

Under 43 CFR 2561.1(b), an application for a Native allotment that extends more than 160 rods along the shore of any navigable waters shall be considered a request for a waiver of the 160-rod limitation on such allotment. Upon a determination that such an allotment meets the requirements of the Native Allotment Act, ELM may either waive the limitation as provided by 43 CFR 2094.2(a) or decrease the size of the approved allotment.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

NAVIGABLE WATERS

Generally

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination

ALASKA--Continued

NAVIGABLE WATERS--Continued

Generally--Continued

by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

OIL AND GAS LEASES

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

POSSESSORY RIGHTS

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was inoperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

SHORE SPACE RESERVES AND RESTRICTIONS

Under 43 CFR 2561.1(b), an application for a Native allotment that extends more than 160 rods along the shore of any navigable waters shall be considered a request for a waiver of the 160-rod limitation on such allotment. Upon a determination that such an allotment meets the requirements of the Native Allotment Act, ELM

ALASKA--Continued

SHORE SPACE RESERVES AND RESTRICTIONS--Continued

may either waive the limitation as provided by 43 CFR 2094.2(a) or decrease the size of the approved allotment.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

STATEHOOD ACT

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

TOWNSITES

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IPFA 155 (Apr. 14, 1983) 90 I.E. 165

TRADE AND MANUFACTURING SITES

Where lands embraced by a pending application for a trade and manufacturing site were included in a unit of the National Park System by sec. 201 of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2377, 16 U.S.C. § 410hh (Supp. V 1981), the trade and manufacturing site application was not legislatively approved by sec. 1328(a)(1) of ANILCA, 94 Stat. 2489, 16 U.S.C. § 3215(a)(1) (Supp. V 1981), but, rather, must be adjudicated under the laws pursuant to which it was initiated.

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Where a husband and wife are engaged in the same productive industry, they are properly treated as an "association of citizens" for the purposes of sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976), and, as such, are limited to a single trade and manufacturing site. However, where an applicant asserts otherwise, it is improper to reject an application on this ground without affording the applicant an opportunity for a hearing to show that the

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

spouses were, in fact, engaged in conducting separate productive enterprises.

Henrietta Roberts Vaden, 70 IBLA 171 (Jan. 20, 1983)

The Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), requires a notice of location to be filed with BLM within 90 days from initiation of a trade and manufacturing site claim. Unless such notice is filed in the proper BLM office within the time prescribed, no credit may be given for occupancy before such filing.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

ALASKA NATIONAL INTEREST LANDS
CONSERVATION ACT

GENERALLY

Where lands embraced by a pending application for a trade and manufacturing site were included in a unit of the National Park System by sec. 201 of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2377, 16 U.S.C. § 410hh (Supp. V 1981), the trade and manufacturing site application was not legislatively approved by sec. 1328(a)(1) of ANILCA, 94 Stat. 2489, 16 U.S.C. § 3215(a)(1) (Supp. V 1981), but, rather, must be adjudicated under the laws pursuant to which it was initiated.

Henrietta Roberts Vaden, 70 IBLA 171 (Jan. 20, 1983)

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey

ALASKA NATIONAL INTEREST LANDS
CONSERVATION ACT--Continued

GENERALLY--Continued

the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Ehyllis Westcoast, 76 IFLA 264 (Oct. 18, 1983)

A conveyance of land to a Native village corporation under an exchange pursuant to sec. 1431(g)(2) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2539 (1980), may proceed despite the objection of a member of an Indian tribe organized pursuant to sec. 16 of the Indian Reorganization Act, 25 U.S.C. § 476 (1976), where the appellant does not establish that the conveyance is subject to the consent of the tribe and that consent has been withdrawn or that the tribe has an interest in the land, amounting to a valid existing right, which would preclude the conveyance.

Charles Edwardsen, Jr., 77 IBLA 228 (Nov. 28, 1983)

OIL AND GAS LEASES

Favorable Petroleum Geological Provinces

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Asamera Oil, Inc. v. Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "ccre" township is available for selection, it must be selected.

Chefarnmute, Inc., 75 IFLA 242 (Aug. 24, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

ABORIGINAL CLAIMS

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

ADMINISTRATIVE PROCEDURE

Generally

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon Ltd., 74 IBLA 139 (July 6, 1983) 9C I.D. 289

APPEALS

Generally

Regulation 43 CFR 4.401(a) authorizes a 10-day grace period for the filing of documents required under 43 CFR, Part 4, Subpart E, if the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Where the final day

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

APPEALS--Continued

Generally--Continued

of the grace period is a Saturday and the following Monday is a Federal holiday, a document filed on Tuesday, if timely transmitted to the proper office, meets the requirements of the regulation.

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Rose, Leo G. Corer, 73 IBLA 97 (May 23, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

Jurisdiction

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals heard of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

George Fredericks, 73 IBLA 344 (June 10, 1983)

Standing

A mining claimant whose unpatented mining claims are located in Alaska outside lands approved for conveyance has standing to appeal a failure by BLM to reserve a public easement in the conveyance.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

CONVEYANCES

Generally

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedCONVEYANCES--ContinuedGenerally--Continued

A decision rejecting an application, filed at a time when the land was withdrawn, pursuant to the tract book or notation rule may be reversed where the application remained pending unadjudicated until after termination of the withdrawal (and thus no administrative burden would be avoided by rejection) and where consideration of the application would not give the applicant any preference right in the land over the general public to which he was not otherwise entitled.

Cook Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983)
90 I.L. 543

Cemetery Sites and Historical Places

Sec. 14(h) (1) of the Alaska Native Claims Settlement Act authorizes the Secretary to withdraw and convey historical places and cemetery sites to the appropriate regional corporation. Although lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act for village selection may not be conveyed under sec. 14(h), after Dec. 18, 1975, lands withdrawn under sec. 11 for village selections which have not been selected or lands embraced in village selections which have been relinquished lose their status as lands withdrawn under sec. 11 and may be conveyed under sec. 14(h) (1).

Cook Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983)
90 I.D. 543

Easements

A regional land selection conveyance must reserve access easements to any isolated tract of publicly owned land and public access easements may be terminated only after an opportunity for public hearing or comment. Therefore, it is not proper to provide in a conveyance for the automatic termination of such easements.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.L. 289

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

Interim Conveyance

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 103 (Sept. 21, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedCONVEYANCES--ContinuedNative Groups

To establish its eligibility to select lands a Native group must constitute a majority of the residents in the locality. Where, on the critical date, all members of the Native group resided on a patented, surveyed, homestead in a community or neighborhood where there were other residents in relatively close proximity, the census or tally may not be limited to the 153 acres within the confines of the homestead boundaries, as the "locality" must include the neighboring area within which the other persons of the community resided.

Tanalian, Inc., et al., 75 IBLA 316 (Aug. 30, 1983)

Reconveyances

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

George Fredericks, 73 IBLA 344 (June 10, 1983)

Regional Conveyances

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.45C as provided in 43 CFR 2650.3-2(a).

The Bureau of Land Management is not required to search state records for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and obviates the need for the Bureau of Land Management to search state records.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.L. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., MTNT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing RightsGenerally

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c) (4) (Supp. V 1981).

Chefarnnute, Inc., 75 IBLA 242 (Aug. 24, 1983)

Village Conveyances

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.450 as provided in 43 CFR 2650.3-2(a).

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.L. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., MTNT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Chefarnnute, Inc., 75 IBLA 242 (Aug. 24, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Village Conveyances--Continued

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

DEFINITIONS

Generally

To establish its eligibility to select lands a Native group must constitute a majority of the residents in the locality. Where, on the critical date, all members of the Native group resided on a patented, surveyed, homestead in a community or neighborhood where there were other residents in relatively close proximity, the census or tally may not be limited to the 153 acres within the confines of the homestead boundaries, as the "locality" must include the neighboring area within which the other persons of the community resided.

Tanalian, Inc., et al., 75 IBLA 316 (Aug. 30, 1983)

EASEMENTS

Generally

Where a Native corporation contends on appeal alternatives exist to easements reserved across Native land selections made pursuant to the Alaska Native Claims Settlement Act, the burden lies upon the corporation to show that the alternatives proposed are reasonable.

Evidence offered to show use of a Native selection for transportation purposes after 1977, was properly admitted as relevant to an issue raised by appellant concerning the existence of alternative easement sites, even though the evidence of use after Dec. 18, 1976, could not be considered to determine the separate issue concerning whether there was present existing use of land prior to Dec. 18, 1976.

Evidence of use of a reserved transportation easement for other uses does not tend to invalidate the easement, where it appears there was also actual use of the area for transportation purposes.

Where, by regulation, a site easement for parking in connection with a transportation easement is limited in extent to 1 acre, no greater area than 1 acre may be reserved.

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

Access

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a FLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Continued --

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedEASEMENTS--ContinuedAccess--Continued

Doyon, Ltd., (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

A regional land selection conveyance must reserve access easements to any isolated tract of publicly owned land and public access easements may be terminated only after an opportunity for public hearing or comment. Therefore, it is not proper to provide in a conveyance for the automatic termination of such easements.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

Decision to Reserve

Where easements have been recommended by the Joint Federal-State Land Use Planning Commission for Alaska, their reservation in a Bureau of Land Management decision of intent to convey will generally be upheld.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

A mining claimant whose unpatented mining claims are located in Alaska outside lands approved for conveyance has standing to appeal a failure by BLM to reserve a public easement in the conveyance.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

Present Existing Use

Under 43 CFR 2650.4-7(a) (3), present existing use is the primary standard used to determine whether easements are reasonably necessary to be reserved under the Alaska Native Claims Settlement Act. Evidence offered by users of the reserved easement of actual use of the area for transportation purposes prior to Dec. 18, 1976, is sufficient to support a reservation under the Act for the transportation uses described in 43 CFR 2650.4-7(b) (1) (viii).

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

Public Easements

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedEASEMENTS--ContinuedPublic Easements--Continued

easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

Review

When a party appeals a BLM easement determination made pursuant to ANSCA, the burden of proof is upon the party challenging the determination to show that the decision is erroneous. While a decision to reserve an easement will ordinarily be affirmed where it is supported by a rational basis, a decision which lacks a rational basis and is unsupported by the record of the determination process will be reversed.

United States Fish & Wildlife Service, 72 IBLA 216 (Apr. 25, 1983)

Where Native corporation appeals a decision to reserve transportation easements across Native lands selected pursuant to the Alaska Native Claims Settlement Act, the burden of proof to show the easements were not properly reserved is on the corporation. Where the decision to reserve transportation easements is supported on the record by a showing of a reasonable basis for the reservation, it is ordinarily affirmed in the absence of a showing of error of law.

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

NATIVE LAND SELECTIONSRegional SelectionsGenerally

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

Regional Selections--ContinuedGenerally--Continued

within the meaning of this provision.

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

A regional selection application is properly rejected where a current protraction diagram of the Bureau of Land Management indicates that the land applied for is beneath a navigable lake, even though the applicant contends the land described in the application is upland. Such rejection does not prejudice a Native village's selection of uplands surrounding the lake, even if subsequent survey of the land establishes that sections applied for contain uplands, since the Native village's conveyance will be conformed to the result of the survey and the Native village will receive title to such uplands.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

State-Selected Lands

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983)

Village Selections

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Chefarnute, Inc., 75 IBLA 242 (Aug. 24, 1983)

NAVIGABLE WATERS

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NAVIGABLE WATERS--Continued

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

A regional selection application is properly rejected where a current protraction diagram of the Bureau of Land Management indicates that the land applied for is beneath a navigable lake, even though the applicant contends the land described in the application is upland. Such rejection does not prejudice a Native village's selection of uplands surrounding the lake, even if subsequent survey of the land establishes that sections applied for contain uplands, since the Native village's conveyance will be conformed to the result of the survey and the Native village will receive title to such uplands.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

WITHDRAWALS AND RESERVATIONS

Generally

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d) (1) of the Alaska Native Claims Settlement Act is null and void at initic.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asanera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

APPEALS--Continued

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(E) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

An appeal to the Board will be dismissed where the issues on appeal are moot and where relief sought by appellant has been granted by a court.

Sierra Club, 71 IBLA 235 (Mar. 18, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Burney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ina May Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald F. Russell, Patricia K. Russell, 72 IELA 28 (Apr. 5, 1983)

James M. Chudnow, Laurent A. Geisbert, 72 IELA 60 (Apr. 12, 1983)

Gary T. Suhrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

APPEALS--Continued

Red Rock Golf & Recreational Ass'n, Inc., 77 IELA 87 (Nov. 9, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the facts on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

Crem Development Co. v. Leo Calder (On Reconsideration), A-266C4 (Apr. 25, 1983) 90 I.F. 223

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IELA 218 (Apr. 25, 1983)

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Fhelms Dodge Corr. et al., 72 IELA 226 (Apr. 26, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IELA 113 (Aug. 12, 1983)

APPEALS--Continued

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Failure by appellant to point to some error in a decision or to show that agency action has deprived him of some right subjects his appeal to dismissal.

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

B. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

APPEALS--Continued

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hock, 76 IBLA 367 (Oct. 25, 1983)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Aleknagik, May M. Clason, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

Where, in its statement of reasons for appeal, appellant fails to allege a cognizable interest which has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Gregory Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Score International, 78 IBLA 142 (Dec. 29, 1983)

APPLICATIONS AND ENTRIES

GENERALLY

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications on the ground that the land is not classified as suitable for such disposition without first ruling on the petitions.

Suellen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

Where land has been withdrawn from lease or disposal under the public land laws pursuant to an Executive order, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Phyllis Inez Maston Bartlett, Daniel Walker Taylor, 71 IBLA 1 (Feb. 9, 1983)

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where applicant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

A mineral patent applicant must support his application with a certificate or abstract of title. 43 CFR 3862.1-3(a).

Where an applicant for a mineral patent has been requested to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the application without prejudice to applicant's right to submit a proper and complete application in the future.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

terminated or expired, so long as the records continue to reflect it as efficacious.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

An application for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end eo instante.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2(a) is properly rejected.

James O. Jones, 75 IBLA 192 (Aug. 22, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudie Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

A decision rejecting an application, filed at a time when the land was withdrawn, pursuant to the tract block notation rule may be reversed where the application remained pending unadjudicated until after termination of the withdrawal (and thus no administrative burden would be avoided by rejection) and where consideration of the application would not give the applicant any preference right in the land over the general public to which he was not otherwise entitled.

Cock Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983)

90 I.D. 543

APPLICATIONS AND ENTRIES--ContinuedAMENDMENTS

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

FILING

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

The Department of the Interior is authorized to approve only Native allotment applications that were pending before the Department on or before Dec. 18, 1971. Where the evidence shows that an application was delivered to the Bureau of Indian Affairs before that date but was not transmitted to the Bureau of Land Management until after that date, the application was timely. Where there are factual questions concerning the pendency of an application they must be resolved at a hearing.

A Native allotment application was pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. The Bureau of Land Management is the proper agency to adjudicate all Native allotment applications, however.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

PRIORITY

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

APPLICATIONS AND ENTRIES--ContinuedVESTED RIGHTS

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Dillingham et al., 73 IELA 156 (May 24, 1983)

Betha McConkey, Robert L. Cook, 74 IELA 4 (June 21, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

Gladys Yonich, Doris L. Bartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Gilson, 76 IELA 20 (Sept. 6, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Murer, 75 IELA 232 (Aug. 23, 1983)

APPRAISALS

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald R. Clark, 70 IELA 39 (Jan. 10, 1983)

APPRAISALS--Continued

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Appraisals of fair market value made in accordance with accepted procedures will not be disturbed in the absence of positive, substantial evidence that the appraisal is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Dillingham et al., 73 IBLA 156 (May 24, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the

APPRAISALS--Continued

Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Elack Hills Power & Light Co., 73 IBLA 199 (May 26, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Betha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Where an appellant establishes that an appraisal of the value of sand and gravel removed from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), did not consider the rights to compensation of the surface owner in its determination of trespass damages, the case may be referred to the Hearings Division for a fact-finding hearing.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Where, while a petition for reconsideration is pending before the Board of Land Appeals, ELM acknowledges petitioner's contention that there are conflicting and inconsistent practices within ELM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable method for arriving at the estimated fair market annual rental for ELM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to ELM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

ASPHALT AND BITUMEN LEASES

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

ATTORNEY'S FEES

GENERALLY

The Board of Indian Appeals is without jurisdiction to grant a request for attorney's fees that is not supported by a properly approved contract or statutory basis therefor.

Edmond H. Burns & Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IPIA 133 (Mar. 22, 1983)

EQUAL ACCESS TO JUSTICE ACT

Pro bono representation and representation by a legal services organization do not constitute "special circumstances" within the meaning of 5 U.S.C. § 504(a) (1) (Supp. V 1981) so as to make an award of attorney's fees under the Equal Access to Justice Act unjust.

An award of attorney's fees under the Equal Access to Justice Act may include compensation for work performed before Oct. 1, 1981, the effective date of the Act.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBLA 285 (Sept. 9, 1983)

90 I.D. 389

BOARD OF INDIAN APPEALS

JURISDICTION

The Board of Indian Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against the Bureau of Indian Affairs.

Lillian Lord, a.k.a. Lillian George v. Comm'r of Indian Affairs, 11 IBLA 51 (Feb. 9, 1983)

Where an appeal raises legal questions, these matters are reviewable by the Board. Insofar as the issues raised involve matters committed solely to the discretion of the Secretary, the Board is bound by the exercise of Secretarial discretion. In this case, the ultimate decision, whether to approve a unit cooperative agreement affecting Indian oil and gas leases, was discretionary. The appeal raises certain legal issues, however, and it is appropriate for the Board to resolve

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

those questions notwithstanding that deference must be given to BIA's discretionary authority.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Assistant Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co. & Woods Petroleum Corp., 11 IBLA 54 (Feb. 10, 1983) 90 I.D. 61

The area of discretionary authority vested in the Bureau of Indian Affairs and over which the Board of Indian Appeals has no jurisdiction, unless the case is specially referred to it, involves those situations in which there is no law to apply.

The characterization of a decision as discretionary rather than based upon an interpretation of law is a legal conclusion reached through legal analysis. The determination of whether a decision is properly characterized as discretionary is within the Board's review jurisdiction.

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve as the basis for Board jurisdiction limited to the alleged violations of law.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IPIA 142 (Apr. 1, 1983)

The Board of Indian Appeals has jurisdiction to review legal questions arising from the alleged violation of regulatory requirements that are prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

When a decision in an appeal to the Deputy Assistant Secretary--Indian Affairs (Operations) is not rendered within 30 days from receipt of all pleadings, the Board of Indian Appeals acquires jurisdiction over the case under 25 CFR 2.19.

Because the Board of Indian Appeals has no independent knowledge of the expiration of the 30-day deadline established in 25 CFR 2.19 for the issuance of a decision in an appeal brought to the Deputy Assistant Secretary--Indian Affairs (Operations), the appellant must inform the Board of the expiration of that period through either a notice of appeal or a motion for the Board to assume jurisdiction. Upon receipt of such information, the Board will docket the appeal and request the transmittal of the administrative record from the Deputy Assistant Secretary.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBLA 146 (Apr. 4, 1983)

Although the Board of Indian Appeals does not have general review jurisdiction over decisions of the Assistant Secretary for Indian Affairs, 43 CFR 4.330 permits the Assistant Secretary to refer any matter concerning Indians to the Board.

Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IPIA 155 (Apr. 14, 1983) 90 I.D. 165

BOARD OF INDIAN APPEALS--ContinuedJURISDICTION--Continued

The Board of Indian Appeals has no jurisdiction to review decisions of the Acting Assistant Secretary for Indian Affairs except as those decisions may be referred to it on a case-by-case basis or through rule-making.

Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168 (Apr. 19, 1983)
90 I.L. 169

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983)
90 I.D. 172

An appeal before the Board of Indian Appeals will not be dismissed on the grounds that the Board lacks authority to grant the relief requested when the appeal seeks review of legal prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983)
90 I.D. 329

The Board of Indian Appeals does not have authority to declare a duly promulgated regulation of the Department to be invalid.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983)
90 I.D. 474

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elmer) Hall, 12 IBIA 62 (Nov. 10, 1983)

In reviewing a decision of the Assistant Secretary for Indian Affairs referred to the Board of Indian Appeals by the Secretary of the Interior under 43 CFR 4.220(a)(2), the Board has the full authority of the Secretary to review questions both of law and of discretion.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983)
90 I.L. 521

BOARD OF LAND APPEALS

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBIA 226 (Apr. 26, 1983)

The Board of Land Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against the Bureau of Land Management.

E. H. Northcutt, 75 IBIA 305 (Aug. 30, 1983)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBIA 261 (Nov. 30, 1983)

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBIA 124 (Dec. 27, 1983)

BUREAU OF INDIAN AFFAIRS

(See also Indian Probate--if included in this Index.)

GENERALLY

The Board of Indian Appeals will remand a case to the Bureau of Indian Affairs under 43 CFR 4.337(b) when legislation is passed during the pendency of an appeal that potentially gives the BIA discretionary authority to take action relative to the basis for the appeal.

Dora Joyce Frieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983)

ADMINISTRATIVE APPEALSGenerally

The Board of Indian Appeals declines to hold that a decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) after the expiration of the

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

30-day period established in 25 CFR 2.19 is void when the appellant acquiesces in the delay.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IPFA 146 (Apr. 4, 1983)

BUREAU OF LAND MANAGEMENT

(See also Mineral Leasing Act--if included in this Index.)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

BUREAU OF RECLAMATION

(See also Irrigation Claims--if included in this Index.)

GENERALLY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Askins, 74 IBLA 12 (June 24, 1983)

BUREAU OF RECLAMATION--Continued

ENVIRONMENT

The exemption under sec. 404(r) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act - Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I), (June 2, 1983)

90 I.L. 255

COAL LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

Where an assignment of a coal lease has been approved by ELM without notice of a controversy regarding an alleged prior assignment to a third party and BLM subsequently receives a protest from the third party, a decision dismissing the protest and declining to disturb existing conditions will be affirmed in the absence of evidence of resolution of the dispute between the parties through agreement or litigation.

Maneotis Sheep Co., Resource Properties, Inc., 71 IBLA 312 (Mar. 22, 1983)

APPLICATIONS

Where emergency leasing regulations have been amended after ELM adjudicated an application to lease coal lands competitively, ELM on remand should apply the amended regulations to the applications at issue.

Glenn H. Johnson, Western Coal Co., 71 IBLA 96 (Feb. 24, 1983)

"Dredging." Dredging to recover coal from a lake or river is a surface coal mining operation as defined in the Surface Mining Control and Reclamation Act of 1977. A coal lease application to dredge a river and lake in a national forest is properly rejected where it does not meet the criteria set out in sec. 522(e) of that Act and 43 CFR 3461.1(a) (2) (i).

Brentwood, Inc., 76 IBLA 73 (Sept. 21, 1983)

90 I.L. 421

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 103 (Sept. 21, 1983)

LEASES

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and ELM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act

COAL LEASES AND PERMITS--Continued

LEASES--Continued

of 1976, are at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act.

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation or where such provisions are in accordance with the proper administration of the lands.

Coastal States Energy Co., 70 IBLA 386 (Feb. 9, 1983)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Franklin Real Estate Co., 71 IBLA 13 (Feb. 10, 1983)

Northern Minerals Co., Northern Coal Co., 71 IBLA 129 (Mar. 7, 1983)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 71 IBLA 92 (Feb. 24, 1983)

Where emergency leasing regulations have been amended after BLM adjudicated an application to lease coal lands competitively, BLM on remand should apply the amended regulations to the applications at issue.

Glenn H. Johnson, Western Coal Co., 71 IBLA 96 (Feb. 24, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include in a readjusted coal lease a provision stating that the lease is subject to the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328 (Supp. V 1981)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

(SMCRA). By making the lease subject to the provisions of SMCRA, a violation of that Act is also a violation of the lease, so the remedies available to the United States as lessor are added to its remedies under SMCRA.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee.

Under 43 CFR 3451.2, readjustment of a coal lease becomes effective 60 days after the lessee is notified of the readjusted terms, except where the authorized officer has required the lessee to furnish information specified in 43 CFR 3422.3-4 for review by the Attorney General. While compliance may be postponed pending review of a lessee's objections, liability for increased rental or royalty accrues from 60 days after initial notification of the readjusted terms.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

Coal lease issued prior to the enactment of the Federal Coal Leasing Amendments Act is at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act. A decision by BLM to readjust coal leases to include requirements mandated by statute and regulation will be affirmed.

Where the Bureau of Land Management has provided the lessee with a notice of intent to readjust a coal lease and specific terms and conditions of the readjusted lease, and has established that the effective date of these readjustments shall be the twentieth anniversary date of the lease, postponing administration of those terms and conditions pending review of the lessee's protest is not inconsistent with requirements for readjustment or untimely application of the terms and conditions by BLM.

A coal lease clause which implements a statutory benefit is not ambiguous where the terms to be applied are expressed in a regulation which is cited in that clause. Where there is no allegation that the applicable process is erroneous or that a cognizable interest has been adversely affected, the proposed clause of the readjusted lease will be affirmed.

EMC Corp., 74 IBLA 389 (July 29, 1983)

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal

COAL LEASES AND PERMITS--Continued

LEASES--Continued

lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 76 IBLA 312 (Oct. 19, 1983)

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 are, at the time of readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

When notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, and such notice prescribes a specific date when readjusted lease terms shall be transmitted to the lessee, BLM's subsequent failure to transmit the readjusted lease terms within the time specified in the notice constitutes a waiver of the right to readjust the lease.

Kaiser Steel Corp., 76 IBLA 387 (Oct. 27, 1983)
90 I.D. 470

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

READJUSTMENT

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

ROYALTIES

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by

COAL LEASES AND PERMITS--Continued

ROYALTIES--Continued

the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State Mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncaloric material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(b) (1976).

Guidelines fixing the amount of a coal lease bond at three times monthly production are not arbitrary and capricious by reason of the fact that the rationale for the guidelines is not set forth therein.

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

COLOR OR CLAIM OF TITLE

GENERALLY

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner.

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Where color-of-title applications allege facts sufficient to establish entitlement to class 1 claims, and where the claimed lands were apparently open to the operation of the public land laws at all times during the alleged occupancy of the lands, BLM's decision rejecting the applications will be vacated and the matters remanded for adjudication of their merits.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

Corrine M. Vigil, 74 IBLA 111 (June 30, 1983)

The obligation to establish a valid color-of-title claim is upon the claimant.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

A class 1 color-of-title claim made under Departmental regulation 43 CFR 2540.0-5(b) must be based upon a document which appears to convey the claimed land to claimant or his predecessors. In the absence of any documentary evidence of claim of title, the Bureau of Land Management correctly rejected claimant's application.

Robert H. Cooper, 75 IBLA 354 (Aug. 31, 1983)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable.

In order to support a class 1 claim a claimant must establish that the land has been held in good faith and in peaceful adverse possession by the claimant, his ancestors or grantors under claim of title for more than 20 years. If the ancestor's possession is not in good faith, the chain has been broken, the holding period of the ancestor may not be tacked on and the statutory period begins anew.

Hal H. Merritt, 77 IBLA 399 (Dec. 9, 1983)

ADVERSE POSSESSION

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

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Hal H. Merritt, 77 IBLA 399 (Dec. 9, 1983)

APPLICATIONS

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Where color-of-title applications allege facts sufficient to establish entitlement to class 1 claims, and where the claimed lands were apparently open to the operation of the public land laws at all times during the alleged occupancy of the lands, BLM's decision

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

rejecting the applications will be vacated and the matters remanded for adjudication of their merits.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

Corrine M. Vigil, 74 IBLA 111 (June 30, 1983)

Hal H. Memmott, 77 IBLA 399 (Dec. 9, 1983)

A class 1 color-of-title claim made under Departmental regulation 43 CFR 2540.0-5(b) must be based upon a document which appears to convey the claimed land to claimant or his predecessors. In the absence of any documentary evidence of claim of title, the Bureau of Land Management correctly rejected claimant's application.

Robert H. Cooper, 75 IBLA 354 (Aug. 31, 1983)

APPRAISED VALUE

Where the purchase price for a tract of land applied for under the Color of Title Act is based solely upon a Bureau of Land Management appraisal of the fair market value of the land at the date of appraisal, and no allowance is made for equitable factors which appear on the record in favor of the applicant, the case will be remanded to the Bureau of Land Management for consideration of such equities.

Paul R. Scott, Betty F. Scott, 76 IBLA 143 (Sept. 26, 1983)

CULTIVATION

The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is not reduced to cultivation at the time the application is filed and has not been cultivated for at least 5 years previously.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is merely grazed or if the land is not reduced to cultivation at the time the application is filed and no evidence is provided to support compliance with the cultivation requirement.

Gladys Lomax, 75 IBLA 89 (Aug. 11, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, land must be reduced to cultivation at the time of filing the claim application.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH

In order to support a class 1 claim a claimant must establish that the land has been held in good faith and in peaceful adverse possession by the claimant, his ancestors or grantors under claim of title for more than 20 years. If the ancestor's possession is not in good faith, the chain has been broken, the holding period of the ancestor may not be tacked on and the statutory period begins anew.

Hal H. Memmott, 77 IBLA 399 (Dec. 9, 1983)

IMPROVEMENTS

Improvements relied upon to establish a class 1 color-of-title claim must be present on the land at the time the application is filed and must enhance the value of the land.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Where a color-of-title applicant claims that valuable improvements have been constructed, and an investigation reveals that the only improvements existing at the time the application was filed were an abandoned oil well and certain roads or trails providing access to the property, the application was properly rejected for failing to satisfy the requirement for valuable improvements.

Gladys Lomax, 75 IBLA 89 (Aug. 11, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, claimed improvements must enhance the value of the land.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

PRIVITY

Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

COMMUNICATION SITES

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald R. Clark, 70 IBLA 39 (Jan. 10, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file

COMMUNICATION_SITES--Continued

a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

CONSTITUTIONAL LAW

GENERALLY

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid or to declare an act of Congress unconstitutional.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBLA 174 (Apr. 21, 1983)
90 I.D. 172

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims reclamation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

ISMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

IBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

DUE PROCESS

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Robert J. King, L. K. Hollenback, 72 IBLA 75 (Apr. 12, 1983)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

E. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

An application for an oil and gas lease is a mere hope or expectancy and where a party has no property interest of which it may be deprived there can be no failure of Constitutional due process.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

CONSTITUTIONAL LAW--ContinuedDUE PROCESS--Continued

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

CONTESTS AND PROTESTS

(See also Administrative Procedure, Rules of Practice--if included in this Index.)

GENERALLY

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCO Services, 73 IBLA 374 (June 15, 1983)

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant

CONTESTS AND PROTESTS--ContinuedGENERALLY--Continued

actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the BLM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Jessie L. Winegeart v. Glenn W. Price, 74 IBLA 373 (July 29, 1983) 90 I.D. 338

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

Katmailand, Inc., et al., 77 IBIA 347 (Dec. 5, 1983)

CONTRACTS

(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

GENERALLY

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of the lease terms.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

Disputed allegations do not constitute evidence and cannot be accepted as proof of facts. Where a contractor asserts that a termination is a breach because it involves a lack of good faith motivated by a specific intent to injure the contractor but offers no evidence to support the constituent facts necessary to find such a breach, no breach may be found.

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Because a contract provision is superfluous, it is not necessarily ambiguous, and the presence in the

CONTRACTS--ContinuedGENERALLY--Continued

same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the regulation, such signing is not authorized and, therefore, not binding on the Secretary.

D. M. Yates, 74 IBLA 159 (July 12, 1983)

CONSTRUCTION AND OPERATIONGenerally

An appeal is denied where a painting contractor claiming an equitable adjustment for increased costs fails to show that the Government breached a duty to disclose superior knowledge regarding multiple layers of paint and information on an effective stripping agent because such information could reasonably be obtained by painting contractors during a site visit or from customary trade sources and the information was not found to be vital to the performance of the contract.

Appeal of R. M. Crum Construction Co., IBCA-1627-10-82 (June 22, 1983)

Where the contractor reasonably interpreted contract provisions covering the excavation and placement of gravel for a building slab and the supplying of certain flooring timbers not to be his responsibility, the Board held the contractor entitled to compensation for extra work when the Government ordered performance of those tasks not required under the contractor's interpretation.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Actions of Parties

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Statements made at a preproposal conference by the designated contracting officer's technical representative (COTR) who presided at the conference, are binding

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedActions of Parties--Continued

upon the Government when it is determined that (i) the COTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the COTR's authority; (iii) the COTR played an extensive role in the preparation of the solicitation; and (iv) the testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Fettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Allowable Costs

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

Changed Conditions (Differing Site Conditions)

Under a contract which required the reconstruction of an earthen dike, where, in the course of performance, the contractor was confronted with unusually large boulders, the Board held the contractor entitled to category (2) or, alternatively, category (1) differing site conditions relief for extra costs incurred based upon the following findings: (a) That a site inspection did not disclose the existence of the boulders in the dike; (b) that the Government failed to communicate to bidders available information concerning the existence of the boulders; (c) that the contract documents gave no indication of their existence; (d) that the Government inspector carelessly miscommunicated a prohibition against blasting to protect nesting osprey despite no prohibition against blasting in the contract documents; and (e) that the term "unclassified excavation" in the circumstances does not include "rock excavation" when blasting is prohibited.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedChanged Conditions (Differing Site Conditions)
--Continued

excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.E. 401

Changes and Extras

The Board denies claims based upon a constructive change theory (operational breaches) where it finds from the evidence of record: That work claimed by the contractor to be extra work was required by the contract to be performed by the contractor at its own expense; that there is no substantial showing of Government fault; that the purported proof rests upon unsupported opinion or mere allegations; that claimed delays alleged to be caused by the Government are not shown to be unusual, unreasonable, or unauthorized by the contract documents; or, that the contractor was paid for the claimed extra work in accordance with the contract provisions.

Where the Government admits that a change to the contract occurred, but refuses to pay the contractor for claimed resulting extra work, contending that the contractor was paid therefor, the Board holds that the burden of proof shifts to the Government to prove the alleged payment, and upon a failure to sustain that burden, holds the contractor entitled to the amount claimed.

Appeal of Thorn Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedChanges and Extras--Continued

in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.E. 109

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable adjustment pursuant to the Changes clause of the contract.

Luther L. Essary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

A dredging contract for the dredging of silt and sediment providing for the removal of undredgable materials by others is found to have been constructively changed when the Government fails to provide for the removal of undredgable materials after notice and the contractor is required to remove such materials in order to timely perform his dredging.

Appeal of L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (July 28, 1983) 90 I.E. 322

The Board concluded that the Government should be allowed no offset for work done in an area outside the designated work areas in the contract when such outside work was directed by the Government's authorized representative to be performed by the contractor and the evidence showed that the directive was inarticulate and that the testimony of the Government witnesses with regard to excessive work, both as to type of material and geographic extent, was in conflict.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.E. 445

Conflicting Clauses

Because a contract provision is superfluous, it is not necessarily ambiguous, and the presence in the same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

Construction Against Drafter

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedConstruction Against Drafter--Continued

representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82
(July 8, 1983) 90 I.D. 297

Contract Clauses

Where a contractor claimed that it should have been allowed to drill or ream all sampled areas of wells to a 9-inch diameter for additional payment, but the contractor had been paid for the maximum contract amount of drilling and reaming, the Board found that the contractor could not have had a reasonable expectation of payment for more than the maximum amount stated in the contract.

Appeal of Raimonde Drilling Corp., IBCA-1359-5-80
(Feb. 14, 1983) 90 I.D. 69

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Because a contract provision is superfluous, it is not necessarily ambiguous, and the presence in the same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim for interest was submitted to the contracting officer for a decision.

Appeal of Casework Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedContract Clauses--Continued

A contract for dredging a lake is found not to be a lump sum contract despite a fixed amount appearing on the face page under the term "Contract price" where a contract provision for measurement and payment expressly provides for payment at unit prices per cubic yard of dredged material.

Appeal of L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (July 28, 1983) 90 I.D. 322

The Board granted the Government's motion for summary judgment as a matter of law where appellant claimed an equitable adjustment for state taxes imposed after the contract date and the contract provided that all state and local taxes were included in the contract price, with no provision for escalation in the event of the imposition of added taxes.

Appeals of CECOS International, Inc., IBCA-1667-3-83
(Oct. 26, 1983)

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83
(Oct. 28, 1983)

In a contract for construction of a prefabricated building, where the Government required painting of certain structural components under the authority of a specification and the Board determined that that specification did not apply to painting the disputed structural components, the Board held the contractor entitled to compensation for the extra painting ordered.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Contracting Officer

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contracting Officer--Continued

in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

Differing Site Conditions (Changed Conditions)

Upon finding that the evidence established a 6.8 percent difference between the actual site conditions encountered at the pit and the test results shown on the plans of the average amount of aggregate passing a No. 4 screen, as opposed to a difference of 26.5 percent asserted by the contractor on appeal, the Board holds, considering all the circumstances involved, that the 6.8 percent does not constitute a material difference and that the contractor failed to sustain its burden of proving a differing site condition.

Appeal of Thorn Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions)
--Continued

excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Excavation costs incurred during removal of rock for a seawall foundation were compensable as a category one differing site condition because the actual conditions encountered were materially different from those indicated in the contract documents. The boring logs, drawings and specifications contained in the solicitation indicated the presence of poor quality, soft rock in the excavation area which gave the contractor a reasonable expectation that the rock could be excavated by conventional mechanical means. During excavation, however, the contractor encountered rock which the evidence established was much harder than was anticipated, and which required the use of massive equipment to complete the project.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

Drawings and Specifications

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change, it is not possible to determine the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board on the basis of the so-called jury verdict approach.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contract for refinishing a hull of a ship, in accordance with the manufacturer's instructions for application of a toxic antifoulant paint, did not include those instructions and the contractor alleged that it did not consider the cost of safety precautions for the paint in its cost estimate and that it was impossible to perform the contract work at the negotiated price, the Board held that the contractor had not stated a valid basis for recovery of the cost of the safety precautions since knowledge of such precautions was not exclusive to the Government but was readily available to the contractor from use of the same paint in a previous contract and from other paint in its paint locker having the same active antifouling ingredient and requiring the same safety precautions. Specifications are not defective merely because a contractor cannot sustain his anticipated profit margin while following them.

Appeal of Dillingham Maritime, IBCA-1360-5-80 (June 8, 1983)

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

The Board found that the contractor reasonably interpreted the contract specifications to require that all materials, except solid rock, should be scaled and where such interpretation was communicated to Government personnel who acquiesced therein, the Board accorded minimal significance to a Government geologist's subjective intent for the rock scaling project (though corroborated by a drawing) not communicated to the contractor and in conflict with the contractor's interpretation of the specifications.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

In a contract for construction of a prefabricated building, where the Government required painting of certain structural components under the authority of a specification and the Board determined that that specification did not apply to painting the disputed structural components, the Board held the contractor entitled to compensation for the extra painting ordered.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duration of Contract

In an indefinite quantity contract with a 4-month ordering period where the maximum quantity of services was ordered immediately after award and an additional delivery order for services exceeding the maximum was issued within 2 months, the Board held that the Government could not require the contractor to perform services in excess of the maximum but when the contractor accepted the order he was bound by the unit prices therein and was not entitled to standby costs prior to receipt of the order which exceeded the maximum quantities stated in the contract.

Appeal of Rayconde Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983) 90 I.D. 69

Estimated Quantities

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable adjustment pursuant to the Changes clause of the contract.

Luther L. Essary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

In a unit price, estimated quantity contract, where the contractor made a prima facie case of the amount of work done as well as the reason for the discrepancy between its case thereon and the Government's and where the Government failed to rebut the contractor's case on the reason for the discrepancy, the Board found that the amount of work done was in accordance with the contractor's claim.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

General Rules of Construction

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Appeal of David R. Ercow, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Statements made at a preproposal conference by the designated contracting officer's technical representative (CCTR) who presided at the conference, are binding upon the Government when it is determined that (i) the CCTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the CCTR's authority; (iii) the CCTR played an extensive role in the preparation of the solicitation; and (iv) the

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedGeneral Rules of Construction--Continued

testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

A motion for reconsideration is denied where appellant argues for a strained interpretation of the payment provisions on the ground that a construction giving effect and meaning to all provisions will be preferred to one that leaves certain provisions superfluous or in conflict with each other.

Appeal of Tree Tree Nursery, IBCA-1628-10-82 (Aug. 17, 1983)

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.D. 396

Intent of Parties

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

The Board found that the contractor reasonably interpreted the contract specifications to require that all materials, except solid rock, should be scaled and where such interpretation was communicated to Government personnel who acquiesced therein, the Board accorded minimal significance to a Government geologist's subjective intent for the rock scaling project (though corroborated by a drawing) not communicated to the contractor and in conflict with the contractor's interpretation of the specifications.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

Notices

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedNotices--Continued

excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

Waiver and Estoppel

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Fowell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

Statements made at a preproposal conference by the designated contracting officer's technical representative (COTR) who presided at the conference, are binding upon the Government when it is determined that (i) the COTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the COTR's authority; (iii) the COTR played an extensive role in the preparation of the solicitation; and (iv) the testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

CONTRACT DISPUTES ACT OF 1978Generally

Where the Government as the moving party of a counterclaim sustains its burden of proof concerning an overpayment to the contractor, the Board concludes that the withholding and set off of funds otherwise payable to the contractor by the Government was proper.

Appeal of Dodd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

A contract was properly terminated for default because a state license was not furnished and the contractor had adequate notice that the license was required and that his failure to provide it would result in termination for default and liability for excess procurement costs.

Appeal of Thumpers Reforestation, IBCA-1576-5-82 (Jan. 31, 1983)

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Generally--Continued

A purchase order requiring that abstracts of title be prepared and certified by an abstractor was properly terminated when the contractor, after adequate written notice, failed to demonstrate that he was authorized under state law to conduct an abstractor's business, and did not otherwise secure the required certification by a properly authorized abstractor.

Appeal of Rudy Martin, IBCA-1606-7-82 (Oct. 19, 1983)

Interest

Where the Government withheld funds, due to the contractor for work performed, to cover the cost of site restoration and seeding pursuant to a site restoration clause which required ruts to be smoothed and depressions to be filled but did not require seeding, the Board held that the contractor was entitled to be paid for the amount erroneously withheld for seeding, plus interest from the date the claim was presented to the contracting officer.

Appeal of Raimonde Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983) 90 I.D. 69

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim for interest was submitted to the contracting officer for a decision.

Appeal of Casework Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the failure of a contractor to certify its claims in excess of \$50,000 when submitting them to the contracting officer, as required by sec. 6(c) of the Contract Disputes Act of 1978, is found to preclude the allowance of interest provided for by sec. 12 of the Act.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

Jurisdiction

The Board finds that it has jurisdiction over a Government counterclaim against a contractor under the Contract Disputes Act of 1978, where such claim was the subject of a decision of the contracting officer.

Appeal of Dodd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a final decision was dismissed with prejudice as untimely.

Appeal of E & F Contractors, IBCA 1646-1-83 (May 13, 1983) 90 I.D. 226

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983) 90 I.D. 228

In an appeal, subject to the provisions of the Contract Disputes Act of 1978, the Board finds that proceedings under the Act are de novo as they have been for appeals governed by the "Disputes" clause.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

An appeal is dismissed, sua sponte, when a surety seeks to become a party to the contractor's appeal absent the consent or assignment of the contractor, and where the only action claimed to constitute privity of contract with the Government is a notice by the Government to the surety that the contractor has failed to timely perform, was terminated for default, and specifies claims against the performance bond.

Appeal of United States Fidelity & Guaranty Co., Surety for Frank Rivera, Inc., IBCA-1645-12-82 (June 10, 1983)

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wagon Redbird & Associates, IBCA-1682-6-83 (Sept. 30, 1983) 90 I.D. 441

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a contracting officer's final decision is dismissed as untimely.

Appeal of Tibbals Construction, Inc., IBCA-1618-9-82 (Nov. 4, 1983)

Timely filing of an appeal under the Contract Disputes Act of 1978 is jurisdictional and an appeal filed after the expiration of the 90-day period allowed by the Act is dismissed since the Board has no jurisdiction to consider an untimely filed appeal.

Appeal of Denver Pump Co., Inc., IBCA-1725-9-83 (Nov. 14, 1983)

Appeal of Nicholson Construction Co., IBCA-1711-8-83 (Nov. 30, 1983) 90 I.D. 494

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

Where the Board found that the contractor failed to comply with the certification requirements of 41 U.S.C. § 605(c)(1), it held that the fact that the contracting officer did not render a decision on the claim as submitted does not affect the consequences of the failure to certify.

The Board held that the failure of a contractor to certify a claim to the contracting officer in accordance with 41 U.S.C. § 605(c)(1) renders the claim as submitted a nullity, relieving both the contracting officer and the Board from any obligation and authority to issue a decision thereon.

The Board rejected appellant's contention that certification of a claim appended to a complaint makes Government counsel an agent of the contracting officer for the purpose of compliance with the requirements of 41 U.S.C. § 605(c)(1) and granted the motion of the Government to vacate the Board's decision rendered on the merits and to dismiss the appeal for lack of jurisdiction.

L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (Nov. 25, 1983) 90 I.D. 491

DISPUTES AND REMEDIES

Burden of Proof

Upon finding that the evidence established a 6.8 percent difference between the actual site conditions encountered at the pit and the test results shown on the plans of the average amount of aggregate passing a No. 4 screen, as opposed to a difference of 26.5 percent asserted by the contractor on appeal, the Board holds, considering all the circumstances involved, that the 6.8 percent does not constitute a material difference and that the contractor failed to sustain its burden of proving a differing site condition.

Where the Government admits that a change to the contract occurred, but refuses to pay the contractor for claimed resulting extra work, contending that the contractor was paid therefor, the Board holds that the burden of proof shifts to the Government to prove the alleged payment, and upon a failure to sustain that burden, holds the contractor entitled to the amount claimed.

Appeal of Thcrn Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Where the Government as the moving party on a counterclaim sustains its burden of proof concerning an overpayment to the contractor, the Board concludes that the withholding and set off of funds otherwise payable to the contractor by the Government was proper.

Appeal of Dodd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Default termination of a contract for conducting Schlumberger Verticle Electrical Soundings at the Nevada test site for the purpose of evaluating possible repositories for high level nuclear wastes was proper due to the contractor's failure to comply with the production requirements of the contract, the failure of its sounding data to conform to the specification requirements, and the contractor's failure to sustain its burden of proof that its default was excusable within the meaning of the Default Clause of the contract.

Assessment of excess costs of reprocurement against a defaulted supply contractor was proper because the Government sustained its burden of proof that the reprocurement was made within a reasonable period of time, that the cost and manner of the reprocurement were reasonable, that all reasonable steps were taken to mitigate damages, and that the reprocurement contract was performed and final payment made.

Heinrichs Geocorrelation Co., IBCA-1213-9-78 & IBCA-1222-11-78 (June 17, 1983)

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses became nothing more than reassertions of the disputed allegations of its claim and insufficient to sustain the burden of proof.

Appeal of Charley C. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedBurden of Proof--Continued

Since the burden of proof in a claim for an equitable adjustment arising because of an alleged Government insistence on performance in excess of the contract requirements lies with the contractor, the contractor's failure to submit any substantial, reliable evidence probative of the elements of its claim, results in the denial of the appeal.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81
(Aug. 23, 1983)

The Government sustained its burden of proof by submitting evidence to show that appellant's security guards committed numerous defaults of tardiness and missing Detex clock stations while appellant failed to sustain its burden of showing that the defaults were excusable, since it offered no evidence. The Board therefore found that termination of the contract for default was justified.

Appeal of William G. Griffin t/a Security of Virginia, Inc., IBCA-1403-10-80 (Sept. 23, 1983)

In a unit price, estimated quantity contract, where the contractor made a prima facie case of the amount of work done as well as the reason for the discrepancy between its case thereon and the Government's and where the Government failed to rebut the contractor's case on the reason for the discrepancy, the Board found that the amount of work done was in accordance with the contractor's claim.

The Board concluded that the Government failed to prove its contention that the contractor removed excessive material for safety reasons, whether by use of explosives or equipment, where the evidence established (1) that the contractor's equipment was incapable of moving solid rock and (2) that rock cuttings first appearing to be solid turned out to be loose and that the less dangerous overall procedure adopted after such discovery was to blast such outcroppings when encountered.

Where the evidence established that in the course of performance of the contract, the contractor, by blasting, removed some quantity of solid rock not compensable under the contract, the Board nevertheless found the contractor's evidence more persuasive than the Government's on the question of the quantity of solid rock removed and held the Government entitled to an offset against the compensable work performed measured by the quantity of solid rock removed proved in the contractor's case.

Appeal of Stephen J. Kenney, IBCA-1438-3-81
(Sept. 30, 1983) 90 I.D. 445

A purchase order requiring that abstracts of title be prepared and certified by an abstractor was properly terminated when the contractor, after adequate written notice, failed to demonstrate that he was authorized under state law to conduct an abstractor's business, and did not otherwise secure the required certification by a properly authorized abstractor.

Appeal of Rudy Martin, IBCA-1606-7-82 (Oct. 19, 1983)

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedBurden of Proof--Continued

Termination of a contract for default was proper where the Government offered sufficient evidence to demonstrate that the contractor failed to perform the requirements of the contract, and the contractor offered no evidence to sustain its burden of showing the default was excusable.

Luther Benjamin Construction Co., Inc., IBCA-1571-4-82
(Oct. 25, 1983)

In a construction contract, where the contractor complained of the Government's refusal to make final payment because of a dispute over two punch-list items and the contractor merely alleged satisfactory performance in one instance and asserted lack of contractual obligation in the other, both of which were contradicted by the Government, the Board held that the contractor had failed to carry its burden of proof for entitlement to recovery, since it failed to support its allegation and assertion by submission of any evidence.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

DamagesLiquidated Damages

Liquidated damages were properly assessed against the contractor where it was shown that no portion of the total computer system delivered by the contractor was ready for use on the agreed installation date, and that the contracting officer's computation of liquidated damages was reasonable and consistent with the contract provisions.

Four-Phase Systems, Inc., IBCA-1269-5-79 (Mar. 1, 1983)

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charley C. Estes, d.b.a. Phoenix Recreation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Equitable Adjustments

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change, it is not

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedEquitable Adjustments--Continued

possible to determine the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board on the basis of the so-called jury verdict approach.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

A claim for an equitable adjustment is sustained in part, where it is determined that weather conditions at the site could reasonably have been of an intensity to constitute a storm event within the "gray area" of a risk of loss agreement entered into by the parties at a preproposal conference, pursuant to which the Government, upon such determination, agreed to participate in the reasonable reconstruction costs of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable adjustment pursuant to the Changes clause of the contract.

Luther L. Essary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Excavation costs incurred during removal of rock for a seawall foundation were compensable as a category one differing site condition because the actual conditions encountered were materially different from those indicated in the contract documents. The boring logs, drawings and specifications contained in the solicitation indicated the presence of poor quality, soft rock in the excavation area which gave the contractor a

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedEquitable Adjustments--Continued

reasonable expectation that the rock could be excavated by conventional mechanical means. During excavation, however, the contractor encountered rock which the evidence established was much harder than was anticipated, and which required the use of massive equipment to complete the project.

Upon a finding of liability, where the quantum evidence adduced by the parties is not satisfactory, the Board will determine the amount of equitable adjustment by utilizing the jury verdict approach.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

Extraordinary Remedies

The Board is without jurisdiction to review an agency's failure to act to grant extraordinary relief under P.L. 85-804, regardless of whether the agency is authorized to grant such relief.

Appeals of CFCOS International, Inc., IBCA-1667-3-83 (Oct. 28, 1983)

Jurisdiction

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983) 90 I.D. 228

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

The Board has no jurisdiction under the Equal Access to Justice Act to award attorney fees and costs to a contractor as the prevailing party in a proceeding against the United States, since the U.S. Court of Appeals for the Federal Circuit has ruled that Congress in that Act did not expressly waive sovereign immunity from liability for such an award with respect to contract dispute proceedings before Boards of Contract Appeals.

The Board holds that it has no authority, pursuant to the CDA, FACA, or any other statute, to order an agency to pay attorney fees and costs or to comply with any particular law, and further, if the Board were to

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedJurisdiction--Continued

order the BIA to pay the requested fees and cost, it would be attempting to do indirectly what it has determined it cannot do directly.

Application for Costs (Central Colorado Contractors, Inc.), IBCA-1672-4-83 (Aug. 17, 1983) 90 I.D. 379

The Board is without jurisdiction to review an agency's failure to act to grant extraordinary relief under P.L. 85-804, regardless of whether the agency is authorized to grant such relief.

Appeals of CECOS International, Inc., IBCA-1667-3-83 (Oct. 28, 1983)

Substantial Evidence

The Board denies claims based upon a constructive change theory (operational breaches) where it finds from the evidence of record: That work claimed by the contractor to be extra work was required by the contract to be performed by the contractor at its own expense; that there is no substantial showing of Government fault; that the purported proof rests upon unsupported opinion or mere allegations; that claimed delays alleged to be caused by the Government are not shown to be unusual, unreasonable, or unauthorized by the contract documents; or, that the contractor was paid for the claimed extra work in accordance with the contract provisions.

Appeal of Thorn Construction Co., Inc., IECA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Since the burden of proof in a claim for an equitable adjustment arising because of an alleged Government insistence on performance in excess of the contract requirements lies with the contractor, the contractor's failure to submit any substantial, reliable evidence probative of the elements of its claim, results in the denial of the appeal.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Aug. 23, 1983)

Termination for Convenience

The principle that the Government may not use the termination for convenience clause where at the time of entering the contract it had the intention to use that clause is not applicable in the absence of any evidence to support the existence of that intention. Even if such a factual circumstance were demonstrable, however, a contractor may not recover where it submits no proof of any damage resulting from that circumstance.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

Termination for DefaultGenerally

Default termination of a contract for delivery of 75 altimeter dials was proper because the contractor failed to perform the work by the extended completion date and offered no excuse for its default. The contractor's claim that it experienced "extreme difficulty in procuring an acceptable silk screened elevation dial," and in "obtaining a vendor capable of doing an

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedTermination for Default--ContinuedGenerally--Continued

acceptable job," indicates fault not only on the part of the subcontractor, but on the contractor's part as well. Every reasonably prudent contractor prior to bidding should obtain assurance that the materials needed to complete the work will be furnished. For a delay to be excusable it must arise from causes beyond the control and without the fault or negligence of both the contractor and his subcontractors or suppliers. Here, the delay resulted in the contractor failing to obtain an acceptable elevation dial when needed, which did not excuse the default.

Appeal of the Airflo Instrument Co., IBCA-1323-12-79 (Jan. 13, 1983)

A default termination for failure to deliver a data entry keypunch computer system in accordance with the mandatory requirements of the contract was proper when nearly 4 months after the agreed installation date the contractor had failed to establish an excusable cause of delay or indicate to the contracting officer a delivery date when a fully workable system would be installed and available for testing.

Four-Phase Systems, Inc., IECA-1269-5-79 (Mar. 1, 1983)

Default termination of a contract for conducting Schlumberger Verticle Electrical Soundings at the Nevada test site for the purpose of evaluating possible repositories for high level nuclear wastes was proper due to the contractor's failure to comply with the production requirements of the contract, the failure of its sounding data to conform to the specific requirements, and the contractor's failure to sustain its burden of proof that its default was excusable within the meaning of the Default Clause of the contract.

Heinrichs Geophysical Co., IECA-1213-9-78 & IECA-1222-11-78 (June 17, 1983)

When the contracting officer did not make a determination that individual omissions of janitorial service had accumulated to the point where the contract was not being substantially performed and the contracting officer did not give sufficient weight to the contractor's timely efforts to cure the deficiencies, the Board found that the termination for default was not justified and should be converted into a termination for the convenience of the Government. Since imposition of excess procurement costs is dependent upon a valid termination for default, conversion of the termination for default to termination for the convenience of the Government removed the basis for the Government's attempt to collect excess costs and the Board sustained the appeal from imposition of such costs.

Fandyman Building Maintenance Co., Inc., IECA-1335-3-80 & 1411-12-80 (July 7, 1983)

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedTermination for Default--ContinuedGenerally--Continued

representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82
(July 8, 1983) 90 I.D. 297

The Government sustained its burden of proof by submitting evidence to show that appellant's security guards committed numerous defaults of tardiness and missing Detex clock stations while appellant failed to sustain its burden of showing that the defaults were excusable, since it offered no evidence. The Board therefore found that termination of the contract for default was justified.

Appeal of William G. Griffin t/a Security of Virginia, Inc., IBCA-1403-10-80 (Sept. 23, 1983)

Termination of a contract for default was proper where the Government offered sufficient evidence to demonstrate that the contractor failed to perform the requirements of the contract, and the contractor offered no evidence to sustain its burden of showing the default was excusable.

Luther Benjamin Construction Co., Inc., IBCA-1571-4-82
(Oct. 25, 1983)

Excess Costs

A contract was properly terminated for default because a state license was not furnished and the contractor had adequate notice that the license was required and that his failure to provide it would result in termination for default and liability for excess procurement costs.

Appeal of Thumpers Reforestation, IBCA-1576-5-82
(Jan. 31, 1983)

Assessment of excess costs of procurement against a defaulted supply contractor was proper because the Government sustained its burden of proof that the procurement was made within a reasonable period of time, that the cost and manner of the purchase were reasonable, that all reasonable steps were taken to mitigate damages, and that the procurement contract was performed and final payment made.

Heinrichs Geoexploration Co., IBCA-1213-9-78 & IBCA-1222-11-78 (June 17, 1983)

When the contracting officer did not make a determination that individual omissions of janitorial service had accumulated to the point where the contract was not being substantially performed and the contracting officer did not give sufficient weight to the contractor's timely efforts to cure the deficiencies, the Board found that the termination for default was not justified and should be converted into a termination for the convenience of the Government. Since imposition of excess procurement costs is dependent upon a valid termination for default, conversion of the termination for default to termination for the convenience of the Government removed the basis for the Government's attempt to collect excess costs and the

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedTermination for Default--ContinuedExcess Costs--Continued

Board sustained the appeal from imposition of such costs.

Handyman Building Maintenance Co., Inc., IBCA-1335-3-80 & 1411-12-80 (July 7, 1983)

FEDERAL PROCUREMENT REGULATIONS

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wakon Redbird & Associates, IBCA-1682-6-83
(Sept. 30, 1983) 90 I.D. 441

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83
(Oct. 28, 1983)

FORMATION AND VALIDITYAuthority to Make

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Pcowell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

CONTRACTS--ContinuedFORMATION AND VALIDITY--ContinuedAuthority to Make--Continued

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82 (July 8, 1983) 90 I.D. 297

Legality

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Mistakes

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

PERFORMANCE OR DEFAULTGenerally

Where the final product of a contract is defective, the fault will be with the Government and not the contractor when the evidence establishes that the contractor complied with the specifications and it is inferable that the Government design and specifications and its administration of the contract are defective.

Upon finding that: (1) There were no contract specifications regarding seepage in a conduit pipe; (2) any seepage was minimal as late as 2 years after the original project completion; (3) a second installation was accepted despite greater seepage; and (4) the Government failed to show how part of the pipe being out of round adversely affected the intended functioning of the installation, the Board holds the contractor entitled to an equitable adjustment having established that its performance was acceptable when first performed, despite some seepage in the pipe and a portion of the pipe being out of round.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

CONTRACTS--ContinuedPERFORMANCE OR DEFAULT--ContinuedGenerally--Continued

In a construction contract, where the contractor complained of the Government's refusal to make final payment because of a dispute over two punch-list items and the contractor merely alleged satisfactory performance in one instance and asserted lack of contractual obligation in the other, both of which were contradicted by the Government, the Board held that the contractor had failed to carry its burden of proof for entitlement to recovery, since it failed to support its allegation and assertion by submission of any evidence.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Compensable Delays

In an indefinite quantity contract with a 4-month ordering period where the maximum quantity of services was ordered immediately after award and an additional delivery order for services exceeding the maximum was issued within 2 months, the Board held that the Government could not require the contractor to perform services in excess of the maximum but when the contractor accepted the order he was bound by the unit prices therein and was not entitled to standby costs prior to receipt of the order which exceeded the maximum quantities stated in the contract.

Appeal of Rainco Inc. Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983) 90 I.D. 69

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Excusable Delays

Default termination of a contract for delivery of 75 altimeter dials was proper because the contractor failed to perform the work by the extended completion date and offered no excuse for its default. The contractor's claim that it experienced "extreme difficulty in procuring an acceptable silk screened elevation dial," and in "obtaining a vendor capable of doing an acceptable job," indicates fault not only on the part of the subcontractor, but on the contractor's part as well. Every reasonably prudent contractor prior to bidding should obtain assurance that the materials needed to complete the work will be furnished. For a delay to be excusable it must arise from causes beyond the control and without the fault or negligence of both the contractor and his subcontractors or suppliers. Here, the delay resulted in the contractor failing to obtain an acceptable elevation dial when needed, which did not excuse the default.

Appeal of the Airflo Instrument Co., IBCA-1323-12-79 (Jan. 13, 1983)

CONTRACTS--ContinuedPERFORMANCE OR DEFAULT--ContinuedImpossibility of Performance

Where a contract for refinishing a hull of a ship, in accordance with the manufacturer's instructions for application of a toxic antifoulant paint, did not include those instructions and the contractor alleged that it did not consider the cost of safety precautions for the paint in its cost estimate and that it was impossible to perform the contract work at the negotiated price, the Board held that the contractor had not stated a valid basis for recovery of the cost of the safety precautions since knowledge of such precautions was not exclusive to the Government but was readily available to the contractor from use of the same paint in a previous contract and from other paint in its paint locker having the same active antifouling ingredient and requiring the same safety precautions. Specifications are not defective merely because a contractor cannot sustain his anticipated profit margin while following them.

Appeal of Dillingham Maritime, IBCA-1360-5-80 (June 8, 1983)

Inspection

Where the final product of a contract is defective, the fault will be with the Government and not the contractor when the evidence establishes that the contractor complied with the specifications and it is inferable that the Government design and specifications and its administration of the contract are defective.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.E. 308

Release and Settlement

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Suspension of Work

Where a work suspension of less than 3 days was neither unreasonable on its merits nor of unreasonably long duration, a claim for additional expenses incurred as a result of the suspension is denied.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

CONVEYANCESGENERALLY

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

B. K. Herndon, 76 IBLA 353 (Oct. 24, 1983)

CONVEYANCES--ContinuedGENERALLY--Continued

Where ELM makes an unequivocal offer to sell a small tract and invites acceptance by submitting a prescribed amount as full payment, and where an individual submits the payment, a binding contract passing equitable title to the buyer is created. Thereafter, ELM holds legal title in trust for the purchaser and, as soon as any impediments to conveyance of full legal title are removed, it is obliged to convey title to him, without additional charge.

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Lawson, 73 IELA 27 (May 9, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

C. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

A conveyance for public lands carries with it an implied affirmation of every necessary prerequisite. After the Secretary of the Interior has decided that any particular land is not mineral in character and has approved conveyance thereof on that basis, the transfer of title is not vitiated by the subsequent discovery of minerals.

While the Secretary of the Interior may recommend appropriate judicial action to cancel a conveyance and regain title if the circumstances warrant, a stranger

CONVEYANCES--Continued

GENERALLY--Continued

to any prior claim or interest has no standing to seek cancellation of a state grant.

George Antunovich, John E. Curran, 76 IBLA 301
(Oct. 19, 1983) 90 I.D. 464

DELEGATION OF AUTHORITY

(See also Administrative Authority, Contracts--if included in this Index.)

REDELEGATIONS

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has re delegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IELA 268
(Mar. 22, 1983)

DESERT LAND ENTRY

GENERALLY

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin D. Christensen, 74 IBLA 239 (July 19, 1983)

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and data and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it.

Roger K. Ogden, 77 IBLA 4 (Oct. 31, 1983) 90 I.D. 481

APPLICATIONS

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duella M. Adams, Lyle R. Adams, 70 IBLA 63 (Jan. 10, 1983)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that the proposed system would provide a permanent and feasible source of sufficient water for irrigation.

Janice Pearson, 73 IBLA 220 (May 27, 1983)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin D. Christensen, 74 IELA 239 (July 19, 1983)

The Bureau of Land Management properly rejects an application for a desert land entry, in accordance with 43 CFR 7.3, where the applicant indicates in her application that she is an employee, or the spouse or agent of an employee, of the Department of the Interior. In addition, where an individual seeking allowance of a desert land entry accepts employment with the Bureau of Land Management while her application is pending, such application must be rejected even if it is not reached for adjudication until after her employment with the Bureau has been terminated.

Karen (Johnson) Bradshaw, 75 IBLA 342 (Aug. 31, 1983)

Where BLM determines that lands identified in a desert land entry application cannot be farmed as an economically feasible operating unit, BLM properly rejects the application.

Roger K. Ogden, 77 IELA 4 (Oct. 31, 1983) 90 I.D. 481

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from groundwater sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate groundwater or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Gene L. Morrison, 77 IBLA 325 (Dec. 5, 1983)

CLASSIFICATION

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duella M. Adams, Lyle R. Adams, 70 IELA 63 (Jan. 10, 1983)

CULTIVATION AND RECLAMATION

An application for a desert land entry is properly rejected where the entryman's plan of operations calls for the construction of a greenhouse and supplemental irrigated finishing shade houses in order to propagate seedling coniferous trees but does not provide for the actual tilling of the soil for raising crops.

William S. Archibald, 75 IBLA 236 (Aug. 24, 1983)

LANDS SUBJECT TO

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a

DESERT LAND ENTRY--ContinuedLANDS SUBJECT TO--Continued

desert land entry petition-application will not be allowed.

Duella M. Adams, Lyle R. Adams, 70 IBLA 63 (Jan. 10, 1983)

Bureau of Land Management properly rejects a desert land entry as to land within a material site because such land is known to contain minerals and mineral lands are excluded from desert land entry.

Norma L. McBride, 73 IBLA 165 (May 24, 1983)

WATER RIGHT

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that the proposed system would provide a permanent and feasible source of sufficient water for irrigation.

Janice Pearson, 73 IBLA 220 (May 27, 1983)

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from groundwater sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate groundwater or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Gene L. Morrison, 77 IBLA 325 (Dec. 5, 1983)

ENDANGERED SPECIES ACT OF 1973SECTION 7Consultation

If a Federal agency decides that its actions will not affect endangered or threatened species or their habitat, the agency is not required to consult the Fish and Wildlife Service unless requested by the Service. 50 CFR 402.04 (a) (2).

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

ENVIRONMENTAL POLICY ACT

(See also National Environmental Policy Act of 1969--if included in this Index.)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient

ENVIRONMENTAL POLICY ACT--Continued

record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

ENVIRONMENTAL QUALITY

(See also Water Pollution Control--if included in this Index.)

GENERALLY

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 70 IBLA 225 (Jan. 24, 1983)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

John E. Archer, 74 IBLA 323 (July 28, 1983)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

The Bureau of Land Management may properly require an oil and gas lease offeror to execute no surface occupancy stipulations as a condition precedent to issuance of an oil and gas lease for land identified as critical habitat for bighorn sheep where the record explains why less stringent alternatives would not provide sufficient protection. However, where the record is inadequate to resolve issues raised by appellant and BLM files no response to the appeal, the case will be remanded to BLM to provide adequate support for its decision.

James M. Chudnow, 76 IBLA 167 (Sept. 28, 1983)

The Board of Land Appeals will affirm a decision rejecting an oil and gas lease offer because of important geological features in the lands sought where the record supports the need to protect the resource and the offeror fails to indicate how leasing would be compatible with protection.

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 77 IBLA 73 (Nov. 8, 1983)

ENVIRONMENTAL STATEMENTS

A decision to implement a vegetative management program will be affirmed insofar as it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment. However, to the extent the record does not show that a salient aspect of the program has been assessed, and that aspect falls within the scope of the Board's jurisdiction, it may not be implemented until an adequate analysis of all relevant factors has been prepared.

SOCATS et al. (On Reconsideration), 72 IBLA 9 (Apr. 4, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Coltrane Creek State Council, 73 IBLA 226 (May 31, 1983)

EQUAL ACCESS TO JUSTICE ACT

ADVERSARY ADJUDICATION

The Equal Access to Justice Act clearly provides that the position of the United States in an adversary adjudication need not be presented by legal counsel. The Government's position is represented if other Government employees take an active adversarial role in the case.

Under 43 CFR 4.603(a) (48 FR 17596 (Apr. 25, 1983)), the Department of the Interior has excluded from coverage under the Equal Access to Justice Act all adversary adjudications conducted by the Department except those that are specifically required by a statute.

In re Attorney's Fees Request of INA--People's Legal Services, Inc., 11 IEIA 285 (Sept. 9, 1983)

90 I.D. 389

APPLICATION

When a decision disposing of the issues on appeal is entered, but the Board retains jurisdiction to review the response to its decision, an application for attorney's fees under the Equal Access to Justice Act, filed before the entrance of a decision or order finally concluding the litigation, may be (1) dismissed without prejudice as premature, (2) stayed until the completion of all proceedings, or (3) decided with an opportunity for additional action in accordance with the decision following completion of all proceedings.

In re Attorney's Fees Request of INA--People's Legal Services, Inc., 11 IEIA 285 (Sept. 9, 1983)

90 I.D. 389

AWARDS

Ex bono representation and representation by a legal services organization do not constitute "special circumstances" within the meaning of 5 U.S.C. § 504(a) (1) (Supp. V 1981) so as to make an award of attorney's fees under the Equal Access to Justice Act unjust.

An award of attorney's fees under the Equal Access to Justice Act may include compensation for work performed before Oct. 1, 1981, the effective date of the Act.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IEIA 285 (Sept. 9, 1983)

90 I.D. 389

EQUITABLE ADJUDICATION

GENERALLY

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the

EQUITABLE ADJUDICATION--ContinuedGENERALLY--Continued

Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

ESTOPPEL

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

ESTOPPEL--Continued

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Frederick W. Ivey, 76 IBLA 195 (Oct. 6, 1983)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized officer which results in a misrepresentation of fact upon which there is detrimental reliance. Unless a wrong was consciously committed, the failure to correct a misunderstanding is insufficient grounds for estoppel.

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

IBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Estoppel against the Government is an extraordinary remedy. In order to establish estoppel, it must be shown that the party to be estopped knew the facts and either intended that its conduct be relied upon or acted so as to cause reliance upon its conduct, and that the party asserting estoppel was ignorant of the true facts and detrimentally relied upon the other party's conduct. Estoppel will not be found where there was no affirmative misrepresentation or misconduct by a Government official.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBLA 214 (July 1, 1983)
90 I.D. 283

ESTOPPEL--Continued

Estoppel will not lie against the Government where the record establishes that a party is properly chargeable with knowledge of the true facts, regardless of whether those facts were actually known by that party.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

EVIDENCE

GENERALLY

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bengoa, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

EVIDENCE--Continued

GENERALLY--Continued

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayc, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbc, 70 IBLA 244 (Jan. 25, 1983)

The true nature of the relationship between apparently separate business entities is a question of fact.

Walch Logging Co., Inc., Lant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBLA 85 (Mar. 18, 1983) 90 I.D. 88

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

EVIDENCE--Continued

GENERALLY--Continued

A claim for an equitable adjustment is sustained in part, where it is determined that weather conditions at the site could reasonably have been of an intensity to constitute a storm event within the "gray area" of a risk of loss agreement entered into by the parties at a preproposal conference, pursuant to which the Government, upon such determination, agreed to participate in the reasonable reconstruction costs of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

ADMISSIBILITY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

BURDEN OF PROOF

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has

EVIDENCE--Continued

BURDEN OF PROOF--Continued

examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of later was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenback, 72 IBLA 75 (Apr. 12, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where ELM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that ELM received the documents.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Petty E. Paxter, 76 IBLA 188 (Oct. 6, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

EVIDENCE--ContinuedBURDEN OF PROOF--Continued

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Betha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

CREDIBILITY

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IECA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

EVIDENCE--ContinuedCREDIBILITY--Continued

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Where an applicant submits evidence which supports a conclusion that all five copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only four copies of the lease offer will be set aside.

Robert G. Lynn (On Reconsideration), 73 IBLA 288 (June 7, 1983)

The Board of Indian Appeals will show deference to an Administrative Law Judge's determination of the credibility of evidence and testimony.

Sam Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IEIA 9 (Oct. 6, 1983)

HEARSAY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

PREPONDERANCE

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 216 (Apr. 25, 1983)

EVIDENCE--Continued

PRESUMPTIONS

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humburg Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bengoa, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983)

Where a simultaneous oil and gas lease application was rejected because ELM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(b) (1981), the legal presumption of regularity which supports the official acts of Government officers will not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by ELM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

A legal presumption of regularity supports the official acts of public officers acting in their official capacities.

Walch Logging Co., Inc., Dant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.B. 88

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenback, 72 IBIA 75 (Apr. 12, 1983)

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that ELM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by ELM and includes a copy of his personal checkbook register showing that a check was issued to ELM but not cashed.

Richard W. Kulis, 72 IBIA 251 (Apr. 27, 1983)

EVIDENCE--ContinuedPRESUMPTIONS--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish a tender of rental where there is no evidence of receipt of the payment in the file.

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that documents were enclosed in the same envelope together with other documents that were received by BLM must be corroborated

EVIDENCE--ContinuedPRESUMPTIONS--Continued

by other evidence to establish filing where there is no evidence of receipt of the missing documents.

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar CrrE., 75 IBLA 57 (Aug. 5, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

PRIMA FACIE CASE

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

SUFFICIENCY

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Continued --

EVIDENCE--Continued

SUFFICIENCY--Continued

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)
William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)
Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)
Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)
Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)
Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)
White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Grooms, 70 IBLA 228 (Jan. 24, 1983)

A legal presumption of regularity supports the official acts of public officers acting in their official capacities.

Walch Logging Co., Inc., Dant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.D. 88

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Disputed allegations do not constitute evidence and cannot be accepted as proof of facts. Where a contractor asserts that a termination is a breach because it involves a lack of good faith motivated by a specific intent to injure the contractor but offers no evidence to support the constituent facts necessary to find such a breach, no breach may be found.

The principle that the Government may not use the termination for convenience clause where at the time of entering the contract it had the intention to use that clause is not applicable in the absence of any evidence

EVIDENCE--Continued

SUFFICIENCY--Continued

to support the existence of that intention. Even if such a factual circumstance were demonstrable, however, a contractor may not recover where it submits no proof of any damage resulting from that circumstance.

Appeal of David R. Frown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenbeck, 72 IBLA 75 (Apr. 12, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where ELM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Ralph Kutinski, 76 IBLA 224 (Oct. 17, 1983)

EVIDENCE--ContinuedSUFFICIENCY--Continued

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Messinger, 75 IELA 69 (Aug. 10, 1983)

The Board of Indian Appeals will not disturb an Administrative Law Judge's finding of fact that is supported by substantial evidence in the record.

Sam Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBLA 9 (Oct. 6, 1983)

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

An inheritable property right in an allotment is created only if an applicant fully complies with the requirements of the Native Allotment Act before his or her death. When an applicant has submitted evidence of the required use and occupancy of the allotment that is disputed during adjudication of the application, the

EVIDENCE--ContinuedSUFFICIENCY--Continued

applicant's heirs may properly submit additional evidence to support the applicant's claims.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

WEIGHT

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IELA 46 (Feb. 18, 1983)

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IECA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

EXCHANGES OF LAND

(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects--if included in this Index.)

GENERALLY

A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), is properly dismissed where the protestant has not established that ELM did not adequately consider the public interest or that the lands exchanged are not of equal value.

F. F. Montoya, 70 IELA 93 (Jan. 11, 1983)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland Cliffs Iron Co., & Schic Shale Oil Co. (Interveners), 78 IELA 68 (Dec. 16, 1983)

EXECUTIVE ORDERS AND PROCLAMATIONS

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

FEDERAL EMPLOYEES AND OFFICERS

(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)

GENERALLY

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

Rental rates for Government-furnished quarters located in one state may not be set by reference to an economically homogenous area survey compiled with respect to an area of three states none of which is the state of the Government-furnished quarters for which the review of rental rate setting is being had; setting rates in such a prohibited manner is erroneous and any rates so set will be set aside.

In the Matter of Lewis A. Guthrie et al., 5 OHA 108 (Mar. 15, 1983)

Increase of quarters rental rates must, under Departmental rules, reflect reasonable value consistent with rates charged for similar private housing in the locality.

Randal L. Andrews, Delbert L. McGuire, & Virgil A. Ruckdashel, 5 OHA 113 (Mar. 21, 1983)

Jean Rodgers et al., 5 OHA 178 (Sept. 19, 1983)

OMB Circular No. A-45 allows agencies to employ one of two alternative approaches to establish comparable rentals as a step in setting rental rates for Government-furnished quarters when the quarters are more than 5 miles away from an established community: either use the comparable rentals in a nearby representative community or conduct an economically homogeneous area survey; the Department, by regulation, has required the use of the latter of these alternatives when both are available. Thus, tenants' findings about rental rates in one particular community are irrelevant when the economically homogeneous area survey approach is used.

When an agency makes a downward adjustment to the basic rental rate for a lack of amenities in particular quarters as compared to the average number of amenities present in the comparable market, there is no surcharge to the basic rates for the amenities that are present.

The various authorities governing rental rate-setting clearly contemplate that some utility services to Government-furnished quarters will not be measured or metered; by providing that charges for such services in those circumstances will be established by reference to the average of such charges in the survey community,

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

the authorities have insured that any resulting inequities to tenants will be kept to a minimum.

Although the Departmental handbook specifically requires ratesetting officials to deny the unusual transportation costs (UTC) deduction for quarters located less than 30 miles from the nearest established community, when quarters are 29.4 miles away from such a community and the proportionate increase in rentals is as great as in this case, it is conceivable that it could be demonstrated that the new rental rate would be unreasonable if not adjusted for transportation costs; under the circumstances of this case, ratesetting officials should treat this appeal as a request to the appropriate Departmental official under 400 DM 5.2E (1), for a determination regarding application of the UTC deduction.

The regulations governing the rental ratesetting process suggest permitting the participation of tenants in certain parts of the process but accord tenants no right to participate; insofar as the regulations provide no relief for the failure to allow participation and as tenants here neither allege nor prove any prejudice resulting from that failure, no relief may be granted.

The principle of comparability, which forms the basis for the ratesetting process, requires that the charge for an item of service be comparable to the charge for a comparable service in the comparison community. When the service is not provided or when some "service" is provided but it is so different from the comparison community service that it is inaccurate to term it comparable, then charging the rate for a comparison community service is inappropriate.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Where a floor plan of a Government rental unit discloses on its face only ordinary patterns, finding that the unit is possessed of the "unusual design features" amenity is inappropriate unless the involved agency can demonstrate the amenity's presence; in the absence of such a showing, a 2 percent decrease in the basic rental rate, is in order.

Appeal of Horace Traylor II et al., 5 OHA 117 (Mar. 22, 1983)

While meetings with employees are encouraged under the provisions of 41 CFR 114-52.601 to assure employee understanding of the process for establishing rental rates for Government-furnished quarters, such meetings are not mandated by these provisions.

Under limitations imposed by the Office of Management and Budget, the rental rate for Government-furnished quarters cannot be reduced to reflect unusual transportation costs by more than the maximum amount authorized by the Department's regulations at 41 CFR 114-52.302.

Under the provisions of 41 CFR 114-52.303, an adjustment to the basic rental rate of Government-furnished quarters is to be made to reflect the difference in the number of "amenities," as defined in 41 CFR 114-52.105(f), associated with the

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

Government-furnished quarters as compared with the number of amenities associated with comparable private dwellings.

Under the provisions of 41 CFR 114-52.207, charges are to be added to the basic rental rate of Government-furnished quarters for furnishings provided by the Government.

To successfully challenge an element of a regional quarters survey used in calculating the basic rental rate for Government-furnished quarters, the employee/occupant must assert more than unsupported conclusions of fact.

Appeal of the Henry Mountain Resource Area Employees, 5 OHA 127 (Mar. 31, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness.

When appropriate, the Government may credit an employee with 90 percent of the heating costs in excess of \$50 over the average seasonal heating costs in the area.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Appeal of Agnes Wales, 5 OHA 215 (Oct. 26, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness. Where the maximum authorized deduction has already been provided, no further transportation deduction is available.

Appeal of Pamela D. Doyle, 5 OHA 219 (Nov. 2, 1983)

AUTHORITY TO BIND GOVERNMENT

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

The authority of the United States to enforce a public right or protect a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Adobe Oil & Gas Corp., 73 IEIA 263 (June 7, 1983)

IBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

The erroneous action of a Departmental employee cannot create rights not authorized by law or excuse compliance with a regulation.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 214 (July 1, 1983) 90 I.D. 283

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Inexco Oil Co., 74 IEIA 260 (July 22, 1983)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law.

John L. Grassmeier, 77 IEIA 156 (Nov. 16, 1983)

INTEREST IN LANDS

The Bureau of Land Management properly rejects an application for a desert land entry, in accordance with 43 CFR 7.3, where the applicant indicates in her application that she is an employee, or the spouse or agent of an employee, of the Department of the Interior. In addition, where an individual seeking allowance of a desert land entry accepts employment with the Bureau of Land Management while her application is pending, such application must be rejected even if it is not reached for adjudication until after her employment with the Bureau has been terminated.

Karen (Johnson) Bradshaw, 75 IBLA 342 (Aug. 31, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(See also Hearings--if included in this Index.)

GENERALLY

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California Railroad (C&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires C&C lands to be managed for permanent forest production. No wilderness review is required where the C&C lands are being managed for commercial timber production.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

It is proper to reject an application for mineral patent where the official records disclose that the alleged claims have been conclusively determined to be abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

Sec. 302 of the Federal Land Policy and Management Act of 1976 vests in the Secretary the responsibility to prevent unnecessary or undue degradation of the public lands. It also preserves a mining claimant's right of ingress and egress. Consequently, the grant of a right-of-way, which is directional under the Act, is not the proper method of regulating a mining claimant's access in conjunction with surface management to prevent undue degradation. Rather, questions of access to mining claims are properly resolved under the surface management regulations at 43 CFR Subpart 3809 which were promulgated pursuant to sec. 302 and specifically address mineral entry, access, and operations.

Mosch Mining Co., 75 IBLA 153 (Aug. 18, 1983)
90 I.D. 382

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. The burden is upon the appellant to establish reversible error in the decision appealed from.

Georgene E. Rieck, William L. Rieck, 76 IBLA 45 (Sept. 19, 1983)

ASSESSMENT WORK

Where the requirement of filing proof of assessment work or a notice of intention to hold the claim applies, such filing must be made within each calendar year, i.e., on or after Jan. 2, and on or before Dec. 30.

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

CONVEYANCES

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

CONVEYANCES--Continued

refusal to exercise the discretionary authority to do so is proper.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

DISCLAIMERS OF INTEREST

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

EXCHANGES

A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), is properly dismissed where the protestant has not established that BLM did not adequately consider the public interest or that the lands exchanged are not of equal value.

E. F. Montoya, 70 IBLA 93 (Jan. 11, 1983)

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Tcm Notestine, 73 IBLA 320 (June 7, 1983)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing or the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., E. Shale Oil Co. (Interveners), 78 IBLA 68 (Dec. 16, 1983)

INVENTORY AND IDENTIFICATION

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

Owyhee Cattleman's Ass'n., Idaho Board of Land Comm'rs., Idaho Cattleman's Ass'n., 71 IBLA 4 (Feb. 10, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jaca Bros., Inc., 73 IBLA 192 (May 26, 1983)

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club - Rocky Mountain Chapter et al., 75 IELA 220 (Aug. 23, 1983)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the wilderness characteristics of a unit during intensive inventory, BLM must consider whether the unit itself possesses those characteristics regardless of the character of adjacent areas that are not public lands.

Michael Huddleston et al., 76 IELA 116 (Sept. 21, 1983)

LAND USE PLANNING

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IELA 124 (Dec. 27, 1983)

LEASES

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden R. Grever, John R. Schumacher, 73 IELA 308 (June 7, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land which is being considered for designation as an "outstanding natural area," under 43 CFR 2071.1(b)(1), or an area of critical environmental concern, under sec. 103(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a) (1976).

Lawrence M. Wert, 75 IBLA 186 (Aug. 22, 1983)

PERMITS

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdocr Recreation Ass'n., Inc., 70 IELA 214 (Jan. 24, 1983)

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PERMITS--Continued

a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Score International, 78 IBLA 142 (Dec. 29, 1983)

PLAN OF OPERATIONS

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

PUBLIC PARTICIPATION

The public is properly included in formulation of resource and land management plans under the directive of the Federal Land Policy and Management Act of 1976, but such public participation is not mandatory for the discretionary issuance of a special use permit which accords with the prevailing management plan for the public lands involved.

National Public Lands Task Force, Nevada Outdcor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 31 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

and in the proper office of ELM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Minerco, Inc., 69 IBLA 379 (Jan. 4, 1983)

Myron S. Kenyon, 73 IBLA 10 (May 5, 1983)

Las Vegas Portland Cement, Inc., 75 IBLA 104 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Waddie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Robert Paoluccic, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the state recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Erna Jellen, Suzanne K. Marco, 70 IBLA 29 (Jan. 6, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Donald O. Shrider, 70 IBLA 36 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work, notice of intention to hold the mining claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

R. B. Mettler, Alfred Babineau, Hiel Crum, 70 IBLA 42 (Jan. 10, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year. This requirement is mandatory, and failure to comply is conclusively deemed to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently neglects to file with the Bureau of Land Management his affidavit of annual assessment work, which otherwise was properly recorded in the county, the claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Egenhoff, 70 IBLA 49 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year following the year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Gerwin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Where a precept of labor for unpatented mining claims was tendered to the proper office of the Bureau of Land Management prior to Oct. 22, 1979, for mining claims located before Oct. 21, 1976, the requirement of the Federal Land Policy and Management Act of 1976 was satisfied, even though the notices of location for the mining claims had not yet been filed for record with BLM.

Jay Edwin Collier, 70 IBLA 283 (Jan. 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

Joseph L. Bush, Betty Bush, 71 IBLA 324 (Mar. 23, 1983)

A. K. Florez, 73 IBLA 142 (May 23, 1983)

When a mining claim owner files a proof of labor for assessment work performed in 1977 or 1979 with the proper office of the Bureau of Land Management in 1980, he has not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the claims are properly declared abandoned and void.

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land before Oct. 21, 1976, must file a copy of the location notice and evidence of assessment work with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and evidence of assessment work performed or a notice of intention to hold the claim on or before Dec. 30 of every year hereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or a notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where there is no evidence that assessment work was performed, the consequence must be borne by the claimant.

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

Eleanor A. Felser, 72 IBLA 232 (Apr. 26, 1983)

Jacqueline Felen, 73 IBLA 383 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Joe V. Andersen, Art Rubash, Estate of Don T. Andersen, 75 IBLA 71 (Aug. 10, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

H. R. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a mining claim was located in Sept. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper ELM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Jack Devault, Dorothy Devault, 72 IBLA 324 (Apr. 28, 1983)

Raymond J. Garcia, 75 IBLA 346 (Aug. 31, 1983)

William L. Hanley, 76 IBLA 93 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment is not filed timely because it was lost in the mail, the consequences must be borne by the claimant.

David L. Gelis, 72 IBLA 327 (Apr. 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne M. Hurt, 73 IBLA 315 (June 7, 1983)

Paul F. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Bruce Naylor, Bill Farney, Farrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Spider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bengoa, 74 IBLA 367 (July 28, 1983)

Parks Potter, 74 IBLA 397 (Aug. 2, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Charles May, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Petty E. Faxter, 76 IBLA 188 (Oct. 6, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Where a mining claim was located in Dec. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the ELM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Cletius G. Rogers, 73 IBLA 1 (May 5, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was lost in the mail, the consequence must be borne by the claimant.

Gary E. Mertle, 73 IBLA 4 (May 5, 1983)

Robert B. Hicks, 73 IBLA 145 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several claims from his affidavit of annual assessment work which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wilbur R. Parsons, 73 IBLA 6 (May 5, 1983)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the required filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and local office of the state where the notices of location were filed.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, had to file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the notice of intention to hold or evidence of assessment work was not timely filed, the claim is properly declared abandoned.

Arthur E. Fields, Sr., 73 IFLA 52 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or to afford claimants any relief from the statutory consequences.

Charles E. Fean, 73 IFLA 108 (May 23, 1983)

Where a mining claim was located in Dec. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Homestake Mining Co., 73 IFLA 117 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

an abandonment of the claim by the owner and renders the claim void.

Dan Lovelady, 73 IBLA 190 (May 26, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of a mining claim from the affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William J. Booth, 73 IBLA 274 (June 7, 1983)

Norma H. Campbell, 73 IBLA 390 (June 15, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Githa T. Navc, 73 IBLA 277 (June 7, 1983)

Shirley Fowerinke, 74 IBLA 210 (July 18, 1983)

Gordon J. Flake et al., 75 IBLA 1 (Aug. 2, 1983)

Milford R. Frittle, 75 IBLA 174 (Aug. 19, 1983)

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

John D. Dowers, 75 IBLA 266 (Aug. 26, 1983)

Henry Allen, Harold Dils, 76 IBLA 14 (Sept. 6, 1983)

Lydia Darlene Shears, 76 IBLA 148 (Sept. 26, 1983)

Grace P. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims prior to Dec. 31 of each year following the calendar year in which the claims were located. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

J. Bradley Smith, 73 IBLA 398 (June 15, 1983)

J. L. Shinn, 74 IBLA 226 (July 18, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

Dan Walker, 74 IBLA 153 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year after the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Page Investment Co., 74 IBLA 163 (July 12, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. The filing must be made both in the county where the location notice is recorded and in the proper office of BLM. Where evidence is introduced showing that the notice of intention to hold was recorded timely in the county and with BLM, a BLM decision declaring the unpatented mining claim abandoned and void will be vacated.

Richard Holland, 74 IELA 167 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims with BLM by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

Arthur A. Iccze, 74 IELA 221 (July 18, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ies Saulsberry, 74 IELA 223 (July 18, 1983)

Floyd R. Bekins, Jr., 75 IELA 80 (Aug. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of BLM. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

David R. Mathews, 74 IBLA 320 (July 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, a notice of intention to hold the claim or evidence of the performance of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Robert E. Bauer, 75 IBLA 62 (Aug. 5, 1983)

L. C. Carter et al., 76 IBLA 90 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, because it was lost in the mail, the consequence must be borne by the claimant.

Delbert A. Reese, 75 IBLA 74 (Aug. 10, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Rachel G. Cconover, 75 IFLA 323 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gustin Corp., H. R. Casperson, 75 IBLA 100 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary.

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on Federal lands must file a notice of intention to hold this claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Michael J. Rouse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Where mining claims were located in May 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claims or evidence of assessment work performed on the claims during 1981, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claims.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Fredrick A. Rogers, 75 IBLA 332 (Aug. 30, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a mining claim was located in Dec. 1976, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, and on or before Dec. 31 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Emery Owens, 75 IBLA 335 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Cliff Sasselli, 76 IFLA 8 (Sept. 6, 1983)

Farrell D. Clontz, 76 IFLA 180 (Oct. 3, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elliott Glasser, 76 IFLA 11 (Sept. 6, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

James Camp, 76 IBLA 96 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Where a mining claim was located in Mar. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. J. Glass, 76 IBLA 215 (Oct. 17, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. Thus, where claims were located in July 1981, notice of intention to hold or a proof of labor had to be filed with BLM prior to Dec. 31, 1982. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Where a mining claim was located in Apr. 1981, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1982, a notice of intention to hold the claim or evidence of assessment work performed on the claim during 1982, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instrument within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

John Milner, 76 IBLA 221 (Oct. 17, 1983)

Where a mining claim was located in Feb. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Ralph Kulinski, 76 IBLA 224 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented millsite located after Oct. 21, 1976, must file a copy of the location notice with the Bureau of Land Management within 90 days after location. There is no statutory requirement that subsequent yearly notices of intention to hold the millsite be filed with BLM. The regulations, 43 CFR 3833.2-1(d), require that a notice of intention to hold the millsite claim be filed with BLM on or before Dec. 30 of the year following recordation of the millsite with BLM.

Eleanor A. Hill, 76 IBLA 234 (Oct. 17, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 21, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Where mining claims were located in Sept. and Oct. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claims or evidence of performance of assessment work on the claims, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim. For mining claims located in Aug. 1981, the requirement for first recordation of a notice of intention to hold the claim or proof of assessment work performed with the Bureau of Land Management became effective in 1982.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of Bureau of Land Management, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Edmund J. Cowan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of assessment work on the claim by Oct. 22, 1979. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The owner of a mining claim located after Oct. 21, 1976, must file a copy of the notice of location with BLM within 90 days after the date of location, and must file either a notice of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of the calendar year after the claim was located and prior to Dec. 31 of each year thereafter. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Homestake Mining Co., 77 IELA 235 (Nov. 29, 1983)

Where the evidence submitted by an appellant preponderates, a decision declaring unpatented mining claims abandoned and void for failure to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be vacated.

Frank J. Tarantino, 77 IELA 328 (Dec. 5, 1983)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

James A. Huff, Elizabeth H. Young, 69 IELA 368 (Jan. 3, 1983)

Estate of Waddie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Lane Number 5, Inc., 70 IELA 14 (Jan. 6, 1983)

Erna Jellen, Suzanne K. Marco, 70 IELA 29 (Jan. 6, 1983)

William C. Niederer et al., 70 IELA 55 (Jan. 10, 1983)

Gerwin Blake Riding, 70 IELA 59 (Jan. 10, 1983)

Robert Faoluccic, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IELA 122 (Jan. 13, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IELA 80 (Apr. 13, 1983)

Addison Girard Clark, 72 IELA 321 (Apr. 28, 1983)

Inez McDorman, Audrey Filger, 72 IELA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Dean W. Frazier, 73 IELA 13 (May 5, 1983)

George F. Newcomb, 73 IBLA 104 (May 23, 1983)

Herbert Clark, 73 IELA 195 (May 26, 1983)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Humburg Mining Co., 73 IBLA 270 (June 7, 1983)
Githa T. Navo, 73 IBLA 277 (June 7, 1983)
Harold L. Lcny, 73 IBLA 280 (June 7, 1983)
Rex Mining Co., 73 IBLA 284 (June 7, 1983)
Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)
Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)
Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)
Hugh Sprague, 73 IBLA 386 (June 15, 1983)
Harold H. Block, 74 IBLA 156 (July 12, 1983)
Page Investment Co., 74 IBLA 163 (July 12, 1983)
Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)
Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)
Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)
Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)
Les Saulsberry, 74 IBLA 223 (July 18, 1983)
Frank Bengoa, 74 IBLA 367 (July 28, 1983)
Parke Potter, 74 IBLA 397 (Aug. 2, 1983)
Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)
Joe V. Andersen, Art Rubash, Estate of Dcn T. Andersen, 75 IBLA 71 (Aug. 10, 1983)
Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)
Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)
Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)
John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)
Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)
Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)
Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)
John D. Dowers, 75 IBLA 266 (Aug. 26, 1983)
Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)
Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)
Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)
H. R. Monroe, 75 IBLA 325 (Aug. 30, 1983)
Homer Owens, 75 IBLA 335 (Aug. 30, 1983)
Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)
Cliff Sasselli, 76 IBLA 8 (Sept. 6, 1983)
Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)
Henry Allen, Harold Dils, 76 IBLA 14 (Sept. 6, 1983)
Mconwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)
Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)
James Camp, 76 IBLA 96 (Sept. 21, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Robert W. Hughes, 76 IFLA 99 (Sept. 21, 1983)
Charles Mayc, Marie G. Mayc, 76 IFLA 107 (Sept. 21, 1983)
Lydia Darlene Shears, 76 IFLA 148 (Sept. 26, 1983)
Farrell D. Clontz, 76 IFLA 180 (Oct. 3, 1983)
Michael J. Rcuse, 76 IFLA 183 (Oct. 3, 1983)
Betty E. Baxter, 76 IFLA 188 (Oct. 6, 1983)
John V. Falding, 76 IFLA 218 (Oct. 17, 1983)
Ralph Kubinski, 76 IFLA 224 (Oct. 17, 1983)
C. G. Rhinehart, 76 IFLA 228 (Oct. 17, 1983)
Grace F. Crocker, 76 IFLA 231 (Oct. 17, 1983)
Crownite Corp., American Pumice Products, Inc., 76 IFLA 236 (Oct. 17, 1983)
Hike Bell Mining & Cil Co., 76 IFLA 254 (Oct. 17, 1983)
Edmund J. Ccwan, 76 IFLA 257 (Oct. 17, 1983)
Adolf Dieckmann (Trust), 76 IFLA 357 (Oct. 24, 1983)
Henry G. Zacher, 77 IFLA 1 (Oct. 31, 1983)
Homestake Mining Co., 77 IFLA 235 (Nov. 29, 1983)
J. Neil Smith, 77 IFLA 239 (Nov. 29, 1983)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee of \$5. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Where mining claims are located between July 8 and July 18, 1982, and copies of the location notices are submitted to the Bureau of Land Management Oct. 14, 1982, without the required service fees, there is no recordation within the 90 days allowed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Vance W. Dighans, Lecn S. Wright, 69 IBLA 394 (Jan. 4, 1983)

Where mining claims were located July 18 and 20, 1982, and a copy of the official record of the notices of location was not filed with the proper office of the Bureau of Land Management within 90 days thereafter, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

David F. Matuszak, 70 IFLA 11 (Jan. 6, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Dearyl Riley, 70 IBLA 33 (Jan. 7, 1983)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Alfred E. Malech, 72 IBLA 223 (Apr. 26, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of unpatented mining lode or placer mining claims located after Oct. 21, 1976, must file in the proper BLM office within 90 days after the location of such claims, a copy of the official record of the notice or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owner, and they are properly declared void.

Thomas C. Hall, 72 IBLA 319 (Apr. 28, 1983)

Herbert Cilch, 73 IBLA 171 (May 24, 1983)

Where a mining claim was located in Sept. 1964 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William E. Jay, 72 IBLA 364 (May 2, 1983)

The Bureau of Land Management is not required to search state record offices for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and obviates the need for the Bureau of Land Management to search state records.

Doyce, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.L. 289

Where mining claims are located on public land that is subsequently transferred to the State of Utah, the Department of the Interior has no further interest in or control over that land, and a mining claimant is not required to comply with the recordation and filing requirements of the Federal Land Policy and Management Act of 1976.

Gordon J. Flake et al., 75 IBLA 1 (Aug. 2, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Sniffer #2 Partnership, 76 IBLA 362 (Oct. 24, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the notice of location. This requirement is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive the requirements of the Act, or to afford claimants any relief from the statutory consequences.

Harold A. Hinkle, Michael E. Hinkle, Thomas J. Fetter, 77 IBLA 152 (Nov. 16, 1983)

Where copies of location notices of mining claims were filed with the Bureau of Land Management in 1977 before promulgation of regulations pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and where BLM later called upon the claim owner to pay the required filing fees, without setting a time limit for compliance, it is error for BLM to reject the mining claim filings because the first check submitted for payment of the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

filing fees was returned as uncollectible, although the claim owner had replaced that check with a guaranteed remittance upon notification.

Bamco Exploration, Inc., 77 IBLA 226 (Nov. 28, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

REPEALERS

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Dillingham et al., 73 IBLA 156 (May 24, 1983)

Betha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Gilson, 76 IBLA 20 (Sept. 6, 1983)

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

Robert Gattis et al., 73 IBLA 92 (May 19, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

San Miguel River Association, Inc., 71 IBLA 213 (Mar. 16, 1983)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

A decision exercising the discretion to terminate a right-of-way grant may be reversed where the record of the decision does not represent a reasoned analysis of pertinent factors with due regard for the public interest.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. The burden is upon the appellant to establish reversible error in the decision appealed from.

Georgene E. Rieck, William L. Rieck, 76 IBLA 45 (Sept. 19, 1983)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

SALES

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

SURFACE MANAGEMENT

Sec. 302 of the Federal Land Policy and Management Act of 1976 vests in the Secretary the responsibility to prevent unnecessary or undue degradation of the public lands. It also preserves a mining claimant's right of ingress and egress. Consequently, the grant of a right-of-way, which is directionary under the Act, is not the proper method of regulating a mining claimant's access in conjunction with surface management to prevent undue degradation. Rather, questions of access to mining claims are properly resolved under the surface management regulations at 43 CFR Subpart 3809 which were promulgated pursuant to sec. 302 and specifically address mineral entry, access, and operations.

Mosch Mining Co., 75 IBLA 153 (Aug. 18, 1983)

90 I.D. 382

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SURFACE MANAGEMENT--Continued

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Dracc Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

WILDERNESS

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in either a wilderness study area or an instant study area action on such an offer must be suspended, to the extent that the lands are within a wilderness study area or instant study area, until congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

Cwyhee Cattlemen's Ass'n, Idaho Board of Land Comm'rs, Idaho Cattlemen's Ass'n, 71 IBLA 4 (Feb. 10, 1983)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

The subjective judgment of BLM as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference where the record discloses BLM's firsthand knowledge of the land within the unit.

Richard J. Leumont, 71 IBLA 112 (Feb. 28, 1983)

Action must be suspended on an oil and gas lease offer to the extent it includes lands in either a wilderness study area or an instant study area until Congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)

90 I.D. 84

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

John Loskot, 71 IBLA 165 (Mar. 10, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area, action on such an offer must be suspended, to the extent that the lands are within a wilderness study area, until Congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management denies a mine plan of operations for mining claims located in a wilderness study area on the basis that the proposed open pit operation would impair the naturalness of the study area, the denial will be upheld where the mining claimant fails to establish error in the determination.

Keith R. Kummerfeld, 72 IBLA 1 (Apr. 4, 1983)

Although boundaries of wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man, configuration of the unit may justify adjustment of the unit boundary on the basis of the outstanding opportunity criteria in certain circumstances. A decision subdividing a unit into three subunits on this basis will be set aside and the case remanded for further consideration where the record fails to reflect analysis of the basis for subdivision.

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

considerable deference notwithstanding that the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

Timothy C. Resinger, 72 IBLA 100 (Apr. 14, 1983)

Where the record evidences ELM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, ELM's subjective judgments of the unit's naturalness qualities and whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

A ELM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to ELM where, on appeal, the appellant raises substantial questions concerning the adequacy of ELM's consideration of whether the unit has the requisite naturalness or outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support ELM's conclusions on these criteria.

Utah Wilderness Ass'n et al., 72 IBLA 125 (Apr. 16, 1983)

The authority of ELM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and ELM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jaca Bros., Inc., 73 IBLA 192 (May 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that it allows the continuation of existing mining, grazing, or mineral leasing uses in the same manner and degree in which they were being conducted on the date of enactment, Oct. 21, 1976, and except to the extent that the exercise of valid existing rights is not prevented under sec. 701(b).

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics.

A decision by BLM disapproving plans of operations concerning mining claims located within wilderness study areas will be upheld where BLM's determination, pursuant to 43 Subpart 3802, that proposed operations would impair the suitability of the study areas for preservation as wilderness is reasonable based on the record and the mining claimant fails to present any new, relevant information in support of an appeal from BLM's decision.

Mining plans of operations concerning claims or portions thereof located outside a wilderness study area are properly evaluated under the surface management provisions of 43 CFR Subpart 3809, rather than under the provisions governing lands under wilderness review contained in 43 CFR Subpart 3802.

Keith R. Kummerfeld, 74 IBLA 106 (June 30, 1983)

Secs. 102(a)(5), 202(a), 202(f), and 309(e) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(5), 1712(a), 1712(f), and 1739(e) (1976), do not require that the policy and procedural clarifications of the Wilderness Inventory Handbook as expressed in OAD 78-61, Changes 2 and 3, be subject to public notice and review. OAD 78-61, Changes 2 and 3, are within the exception of sec. 4(a) of the Administrative Procedure Act, 5 U.S.C. § 553 (1976), providing that interpretative rules, general statements of policy, or rules of agency organization procedure, or practice are not required to be promulgated as formal regulations.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of an inventory unit from designation as a wilderness study area and from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Davis Oil Co., 75 IBLA 163 (Aug. 18, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area BLM may not issue a lease, and action on such an offer must be suspended until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Lawrence M. Bert, 75 IBLA 186 (Aug. 22, 1983)

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club - Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983)

The mere assertion that an area is subject to outside sights and sounds, without evidence that they are both adjacent and so extremely imposing that they cannot be ignored, will not preclude a finding by BLM that the area is natural and offers outstanding opportunities for solitude.

The desirability of managing an area for competing multiple uses, including off-road vehicle use, is properly considered during the study phase of the wilderness review process.

Idaho Trail Machine Ass'n et al., 75 IBLA 256 (Aug. 26, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Ehyllis H. CdeU, 75 IBLA 313 (Aug. 30, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Wilford Cothern, 76 IBLA 23 (Sept. 8, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multi-resource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry-stems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Phelps Dodge Corp., 76 IBIA 31 (Sept. 8, 1983)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units for the purpose

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

of determining whether the opportunities are "outstanding"; the term "outstanding" is necessarily comparative in concept.

In assessing the wilderness characteristics of a unit during intensive inventory, BLM must consider whether the unit itself possesses these characteristics regardless of the character of adjacent areas that are not public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or primitive and unconfined type of recreation are entitled to considerable deference.

Michael Huddleston et al., 76 IBIA 116 (Sept. 21, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management rejects a plan of operations for drilling on mining claims located in a wilderness study area on the basis that the proposed operation would impair the naturalness of the study area, the rejection will be upheld where the mining claimant fails to establish error in the determination.

Golden Triangle Exploration Co., 76 IBIA 245 (Oct. 17, 1983)

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on ELM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that ELM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Ida Lee Anderson, 76 IBIA 395 (Oct. 27, 1983)

Where there is no evidence that a route has been improved by mechanical means, it will not be considered a road even where it is subject to relatively regular and continuous use and maintenance is unnecessary.

BLM may not properly eliminate an inventory unit from further consideration as a WSA because of the adverse impact on naturalness due to unauthorized construction of post-FLEMA roads, even where ELM concludes that the roads cannot be rehabilitated to a substantially unnoticeable condition.

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

A BLM decision to eliminate an area from further consideration as a WSA will be set aside and the case remanded to ELM where, on appeal, the appellant raises substantial questions concerning the adequacy of ELM's consideration of whether the area has the requisite naturalness and the record does not adequately support ELM's conclusion on that criterion.

Philip Allen, Desert Wilderness Coalition, 77 IBIA 330 (Dec. 5, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in Change 3 of the WILH prohibits consideration of the effect of scenic vistas on enhancing opportunities for solitude within an inventory unit, and where such vistas are "so extremely imposing" they cannot be ignored, a decision of BLM declining to designate the unit as a WSA arrived solely on the basis of ignoring these scenic vistas will be reversed.

New Mexico Natural History Institute, 78 IELA 133 (Dec. 29, 1983)

FEES

(See also Accounts--if included in this Index.)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

San Miguel Power Association, Inc., 71 IELA 213 (Mar. 16, 1983)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

FISH AND WILDLIFE COORDINATION ACT

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

D. M. Yates, 73 IBLA 353 (June 14, 1983)

FISH AND WILDLIFE COORDINATION ACT--Continued

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Howell, 75 IELA 328 (Aug. 30, 1983)

FISH AND WILDLIFE SERVICE

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IELA 240 (Jan. 25, 1983)

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Howell, 75 IELA 328 (Aug. 30, 1983)

FREEDOM OF INFORMATION ACT (Act of June 5, 1967)

Final decisions and orders of the Department of the Interior made in the adjudication of cases, including Indian Child Welfare Act cases, are both available to the public and indexed in accordance with the requirements of 5 U.S.C. § 552(a)(2) (1976).

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.C. 283

GEOTHERMAL LEASES

(See also Hearings, Mineral Leasing Act--if included in this Index.)

ACREAGE LIMITATIONS

A denial of approval of assignments of geothermal leases will be set aside and the cases remanded to BLM for reevaluation and recalculation of the acreage chargeable to the parties involved when it is not clear from the record whether appellants have properly been charged with their proportionate share of acreage of leases to be held in common as per the regulations in 43 CFR 3201, and whether this acreage exceeds the maximum allowable acreage of 20,480 acres for any one lessee when considered in conjunction with their chargeable acreage in other outstanding leases.

Caroline Hunt (Trust Estate) et al. (On Reconsideration), 70 IELA 65 (Jan. 10, 1983)

GEOHERMAL LEASES--Continued

APPLICATIONS

Generally

A geothermal lease application is properly rejected where the applicant submits a proposed plan of operations which includes the building of homes and the development of mining claims on the geothermal lease site, if a lease is issued.

George M. Wilkinson, 70 IBLA 1 (Jan. 6, 1983)

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

Amendments

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

Description

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

COMPETITIVE LEASES

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive geothermal lease sale where the record discloses a rational basis for the conclusion that the highest bid was inadequate. Where a competitive lease bid is not clearly spurious or unreasonable on its face and the record fails to disclose a rational basis for the conclusion that the bid is inadequate, the decision must be set aside and remanded for compilation of a more complete record and readjudication of the acceptability of the bid.

Amincil USA, Inc., 70 IBLA 5 (Jan. 6, 1983)

GEOHERMAL LEASES--Continued

CONSENT OF AGENCY

Where pursuant to regulation 43 CFR 3201.1-3 the U.S. Forest Service, the agency managing the surface lands, refuses to consent to leasing for geothermal exploitation, the Department may not issue a lease.

Francana Resources, Inc., 75 IBLA 125 (Aug. 15, 1983)

DESCRIPTION OF LAND

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

DISCRETION TO LEASE

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

LANDS SUBJECT TO

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

GEOHERMAL RESOURCES

A corporate applicant for geothermal leases does not lose its priority as senior offeror because it has been temporarily suspended by its state of incorporation for failure to pay taxes, where the state has a policy that a suspended corporation may regain full status, without penalty, upon payment of its obligations.

Where a corporation is organized under the laws of a state, geothermal leases may be issued to it.

California Energy Co., Inc., 70 IBLA 221 (Jan. 24, 1983)

GRAZING AND GRAZING LANDS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

GRAZING PERMITS AND LICENSES

(See also Appeals, Hearings, Taylor Grazing Act-- if included in this Index.)

GENERALLY

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d), BLM has discretionary authority to require marking and counting to control unauthorized grazing use or to promote the orderly administration of public lands. A decision requiring that domestic livestock be marked and counted will be sustained where the record establishes a rational basis therefor.

Cook Sheep Company (Trust), 70 IBLA 348 (Feb. 3, 1983)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

ADJUDICATION

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

An application for exclusive grazing privileges in a long-established community grazing allotment is properly rejected under 43 CFR 4130.6(b) as inconsistent with the cooperative purposes and existing operations of a community allotment with numerous other long-time permittees.

Homer Smelser v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

No reduction of grazing preference will be set aside on appeal if it appears that it is reasonable and that it represents substantial compliance with the provisions of 43 CFR Part 4100. A determination of carrying capacity will not be set aside in the absence of

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

substantial evidence establishing error in the determination.

James E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of 43 CFR Part 4110.

Raymond C. Auge v. Bureau of Land Management, 76 IBLA 83 (Sept. 21, 1983)

APPEALS

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

No reduction of grazing preference will be set aside on appeal if it appears that it is reasonable and that it represents substantial compliance with the provisions of 43 CFR Part 4100. A determination of carrying capacity will not be set aside in the absence of substantial evidence establishing error in the determination.

James E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

APPORTIONMENT OF FEDERAL RANGE

An application for exclusive grazing privileges in a long-established community grazing allotment is properly rejected under 43 CFR 4130.6(b) as inconsistent with the cooperative purposes and existing operations of a community allotment with numerous other long-time permittees.

Homer Smelser v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

BASE PROPERTY (LAND)

Ownership or Control

Even if an open range law provides cattle belonging to a grazing permittee or licensee with access to forage on unfenced land owned by others within an allotment, the permittee or licensee does not have ownership or control over that land. Such land cannot

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Ownership or Control--Continued

be considered base property for the award of grazing preference under 43 CFR 4110.2.

James E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

CANCELLATION OR REDUCTION

In order to impose the provisions of 43 CFR 4170.1-3 the permittee or lessee must have been convicted or otherwise be found to have been in violation of State or Federal laws or regulations concerning conservation or protection of natural or cultural resources or the environment. Finding the officer, agent, or employee in violation of said laws or regulations will not support an action under this section against the principal.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

EXCHANGE OF USE

The District Manager has discretion to grant or reject an exchange-of-use application. Where the District Manager considers the equities on both sides of a dispute involving an exchange-of-use application and partially grants the application, his decision will not be disturbed on appeal if it is reasonable, within the scope of his authority, and comports with sound management practices.

Harold J. Heath, Lawrence Walker, 73 IBLA 147 (May 23, 1983)

HEARINGS

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

Although annual forage must be given some consideration in determining range capacity, such forage varies widely from year to year so only the minimum amount that may be expected in any given year can serve as a basis in calculating grazing preference.

James E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

GRAZING PERMITS AND LICENSES--Continued

RANGE SURVEYS--Continued

Absent proof of error, a Bureau of Land Management decision establishing range capacity will not be disturbed.

Raymond C. Auge v. Bureau of Land Management, 76 IBLA 63 (Sept. 21, 1983)

HEARINGS

(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arlt, 70 IBLA 244 (Jan. 25, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C. E. K. Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

HEARINGS--Continued

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance

HEARINGS--Continued

with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Where the Bureau of Land Management has assessed treble damages for a trespass occurring in connection with a contract for sale of sand and gravel and the purchaser offers to produce evidence to show that severance of material not included in the contract of sale was not grossly negligent, contrary to the finding by BLM, a hearing is ordered to afford the purchaser an opportunity to prove facts as claimed.

Sunrise Construction Co., 73 IBLA 185 (May 26, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Aleknagik, May F. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public

HEARINGS--Continued

interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 68 (Dec. 16, 1983)

HOMESTEADS (ORDINARY)

(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

CONTESTS

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the BLM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Jessie L. Winegeart v. Glenn W. Price, 74 IBLA 373 (July 29, 1983) 90 I.D. 338

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), is properly rejected where the applicant has refused to provide a certificate of eligibility required by 43 CFR 2531.1(b).

Howard M. Smithson, 70 IBLA 126 (Jan. 13, 1983)

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications are properly rejected.

Suellen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

GENERALLY--Continued

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Phyllis Inez Maston Fartlett, Daniel Walker Taylor, 71 IBLA 1 (Feb. 9, 1983)

An application for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2(a) is properly rejected.

James C. Jones, 75 IBLA 192 (Aug. 22, 1983)

CLASSIFICATION

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications on the ground that the land is not classified as suitable for such disposition without first ruling on the petitions.

Suellen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

LANDS SUBJECT TO

Where land has been withdrawn from lease or disposal under the public land laws pursuant to an Executive order, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior. Where BLM records show lands have been legally patented, an Indian allotment application for such lands is properly rejected.

Hank Patterson, 71 IBLA 109 (Feb. 28, 1983)

Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudie Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

INDIAN CHILD WELFARE ACT OF 1978

FINANCIAL GRANT APPLICATIONS

Generally

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Generally--Continued

as the basis for Board jurisdiction limited to the alleged violations of law.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (Apr. 1, 1983)

25 CFR 23.25(c) (3) does not require that an organization providing Indian child welfare or family assistance programs have previously received grant funds under the Indian Child Welfare Act in order to qualify for its exemption.

Read in context, 25 CFR 23.29(b) (4) is an integral part of sec. 23.29, which is intended to help ensure that each application for grant funds under the Indian Child Welfare Act will ultimately be evaluated on its merits, rather than disapproved because of technical shortcomings.

The remedy for failure to meet the deadlines established in 25 CFR 23.30, 23.32, and 23.34 for consideration of an application for grant funds under the Indian Child Welfare Act is provided in 25 CFR 23.65 and is the right to request a decision from the next higher official having approval authority.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

Regulations requiring the use of "near reservation" designations for funding under the Indian Child Welfare Act establish reasonable procedures through which the limited funds under the Act can be allocated to organizations operating on or near reservations and those operating off the reservations to ensure nonduplication of coverage.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

If there is no duplication of service population between a tribe providing services under the Indian Child Welfare Act and an independent organization providing the same types of services, the mere fact that the organization is located in an area designated "near reservation" by the tribe does not render it ineligible to seek grant funds.

When more than one otherwise eligible grant applicant applies for funds under the Indian Child Welfare Act to provide services to the same Indian population, funding should be given only to the organization whose proposal best promotes the purposes of the Act.

Seattle Indian Center v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 67 (Dec. 5, 1983) 90 I.D. 515

Disapproval

A violation of the responsibilities undertaken by the Bureau of Indian Affairs in 25 CFR 23.29(b) (4) is not proven merely by a showing that an application for grant funds under the Indian Child Welfare Act was disapproved without prior notification of possible disapproval and an opportunity to correct errors. Rather, the reasons for disapproval must be examined to

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Disapproval--Continued

determine whether they are the kinds of problems addressed by the regulation.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 146 (Apr. 4, 1983)

The failure of an Indian organization providing Indian Child Welfare Act services in an area designated "near reservation" to seek funding through the governing body of the tribe making the designation constitutes a "special problem or impediment" to approval of the application within the meaning of 25 CFR 23.29(b) (4).

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 226 (July 5, 1983)

Funding

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

The Bureau of Indian Affairs has promulgated regulations in 25 CFR Part 23 setting forth criteria for the allocation of limited grant funds under the Indian Child Welfare Act. These regulations, including the requirement that tribes be responsible for seeking funding for those tribal members living off the reservation but within areas designated "near reservation" by publication in the Federal Register, are reasonable attempts to conserve limited funds and ensure that duplication of benefits does not occur.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 214 (July 1, 1983) 90 I.D. 283

So long as a departure from prior practice is clearly explained and shown to be neither arbitrary nor capricious, the Department has full authority to correct prior erroneous interpretations of law.

The Board of Indian Appeals will not permit a collateral attack on the designation of an area as "near reservation" in the context of an appeal from the denial of a grant application.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 226 (July 5, 1983)

Geographic location alone does not determine whether a program seeking funding under the Indian Child Welfare Act is to be characterized as "off" or "near" reservation; rather the client population served by the program is the determinative factor.

The definition of "Indian" in 25 CFR 23.2(d) (2) specifies the type of proof of Indian ancestry necessary to qualify for receipt of services funded under the Indian Child Welfare Act. It does not purport to

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Funding--Continued

define the client population of "near reservation" programs.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations) (On Reconsideration), 11 IEIA 276 (Aug. 15, 1983)

90 I.D. 376

INDIAN LANDS

(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)

ACQUIRED LANDS

The discretion given to the Secretary of the Interior under 25 U.S.C. § 409a (1976) to approve the acquisition of certain lands in Indian trust or restricted status encompasses the power to reconsider the approval of such an acquisition when it appears that approval may have been granted through fraud or misrepresentation.

Once reconsideration of approval of an acquisition of land in Indian trust or restricted status in accordance with 25 U.S.C. § 409a (1976) is properly undertaken and the requirements of due process are met, conclusive evidence that the transaction did not meet the statutory or regulatory requirements provides grounds for termination of the trust or restricted status.

Under 25 U.S.C. § 409a (1976), the funds used to purchase land to be held in trust in order to replace Indian trust or restricted lands taken for a public purpose or voluntarily sold by the Indian owner must be shown to have been derived from the prior taking or sale of such trust or restricted lands.

Dora Joyce Prieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IEIA 124 (Mar. 22, 1983)

CONTRACTSGenerally

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IEIA 299 (Sept. 12, 1983) 90 I.D. 396

FORESTRYTimber Sales ContractGenerally

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will

INDIAN LANDS--ContinuedFORESTRY--ContinuedTimber Sales Contract--ContinuedGenerally--Continued

presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

The Board of Indian Appeals finds that the particular Indian timber sale contract before it imposes separate obligations upon the purchaser to meet a minimum annual cutting requirement and to make a minimum annual payment.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.L. 396

Breach and Damages

The mitigation of damages resulting from the breach of an Indian timber sale contract is ordinarily best accomplished through a resale of the remaining timber on terms approximating those of the original contract.

Decisions made by officials of the Bureau of Indian Affairs as supervisors of Indian leases will be upheld when they are reasonable and based upon substantial evidence in the record. Where the Board finds that BIA has calculated damages improperly or in violation of contractual or regulatory requirements, the agency's action will be set aside.

Standard Provision B6.12 of the standard Bureau of Indian Affairs Indian timber sale contract applies when a cutting deficiency incurred in one contract term is cured by cutting during a subsequent term or terms.

In calculating damages for breach of an Indian timber sale contract, it is reasonable to apportion the amount of timber required to be cut evenly over the term or terms during which logging was to have occurred.

In calculating damages for anticipatory breach of an Indian timber sale contract, it is proper to determine market value at the time or times set for performance through the date of trial.

Expenses incurred in the expectation that an Indian timber sale contract might be breached are not recoverable.

Expenses incurred in order to resell timber remaining after the breach of an Indian timber sale contract are recoverable.

Recovery of reasonable administrative costs incurred by the Bureau of Indian Affairs as a direct result of the breach of an Indian timber sale contract will be allowed.

The language of Standard Provision B2.7 of the standard Bureau of Indian Affairs Indian timber sale contract, to the effect that "any costs or expenses" incurred because of a breach of contract are recoverable, will be interpreted in accordance with the general rules governing the determination of damages unless it is shown that all parties accepted a broader interpretation of the language.

Walch Logging Co., Inc., Pant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.L. 88

INDIAN LANDS--ContinuedFORESTRY--ContinuedTimber Sales Contract--ContinuedBreach and Damages--Continued

The Board of Indian Appeals finds that the particular Indian timber sale contract before it imposes separate obligations upon the purchaser to meet a minimum annual cutting requirement and to make a minimum annual payment.

Under the circumstances of this case, provision B6.12 of the standard Bureau of Indian Affairs timber contract does not apply to the calculation of liquidated damages resulting from failure to make the minimum annual payment required by the negotiated sections of the contract and does not provide a right to "cure" the failure to make the full payment.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.L. 396

LEASES AND PERMITSGenerally

It is error for the Bureau of Indian Affairs to lease land in the estate of a deceased Indian under 25 CFR 162.2(a)(3) on the grounds that the heirs of the estate are "undetermined" when an Administrative Law Judge has accepted a compromise settlement of the estate entered into by all possible heirs and meeting the requirements of 43 CFR 4.207(a).

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

Arbitration

In the absence of extenuating circumstances, the Board of Indian Appeals will uphold an arbitration clause in a lease involving Indian trust land.

Cancellation of a lease of Indian trust land is improper if arbitration procedures required by the lease have not been followed.

Racquet Drive Estates, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 184 (May 24, 1983) 90 I.L. 243

Minerals

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedMinerals--Continued

the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IELA 337 (Apr. 29, 1983)

Although an application for a mining lease may result from exploration under a mineral prospecting permit, the application does not seek a continuation of existing rights within the meaning of 5 U.S.C. § 558(c) (1976).

The expiration of a mineral prospecting permit does not affect the right of the permittee to receive a mining lease for which timely application was made. The term of the prospecting permit is not extended by the filing of an application for a mining lease.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IELA 249 (July 29, 1983) 90 I.D. 329

Revocation or Cancellation

The Secretary of the Interior has authority to cancel a lease of Indian trust land and to review administratively a decision of a subordinate official that such a lease should be canceled.

Departmental regulations in 25 CFR Part 2 and 43 CFR Part 4, Subpart D, ensure that due process is accorded to all parties to a lease of Indian trust land before such a lease is canceled.

Cancellation of a lease of Indian trust land is improper if arbitration procedures required by the lease have not been followed.

Racquet Drive Estates, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IELA 184 (May 24, 1983) 90 I.D. 243

Cancellation procedures established in a prospecting permit of Indian trust land are not applicable when the permit expires by its own terms.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IELA 249 (July 29, 1983) 90 I.D. 329

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedRevocation or Cancellation--Continued

It is improper for the Bureau of Indian Affairs to reinstate a canceled lease of Indian trust lands when the lessee fails to show, after an opportunity for curing defaults, that the defaults have been cured or that they will be cured in the immediate future.

Sam Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IELA 9 (Oct. 6, 1983)

Secretarial Approval

Regardless of expectations existing at the time a prospecting permit covering trust lands is approved, by approving the permit the Secretary does not relinquish his responsibility to review any subsequent mining lease application in order to determine whether the proposed lease is in the best interest of the Indians involved.

The Bureau of Indian Affairs properly disapproved a mining lease application when the applicant had failed, without explanation, to comply with a significant provision of its prospecting permit.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IELA 249 (July 29, 1983) 90 I.D. 329

MINING LEASESGenerally

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from

INDIAN LANDS--ContinuedMINING LEASES--ContinuedGenerally--Continued

overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IEIA 337 (Apr. 29, 1983)

Royalties

Adjustment of royalty is not required where there is no lease provision or applicable regulation either permitting or requiring an adjustment.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

PATENT IN FEEJurisdiction

The Department of the Interior has no authority to hold land in Indian trust status for non-Indians. When non-Indians acquire Indian trust land through inheritance or devise, fee patent title should normally be transferred immediately to such individuals pursuant to 25 CFR 152.6.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

RESTRICTED ALLOTMENT

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 9C I.D. 165

RIGHTS-OF-WAY

In plain and unambiguous regulations codified at 25 CFR Part 169, the Secretary of the Interior has required tribal consent for any right-of-way across tribal land, not just those sought under 25 U.S.C. §§ 323-328 (1976).

Article IX, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 9C I.D. 474

INDIAN PROBATE

(See also Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)

ADoption (See also CHILDREN, ADOPTED--if included in this Index.)

Generally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Falls, 11 IEIA 77 (Mar. 15, 1983)

An adoption is not normally considered a testamentary act and is not subject to the rules governing the execution of testamentary instruments. An otherwise proper adoption decree showing that the requirements of the jurisdiction rendering it were met will be recognized.

Estate of James Werny Pekah, 11 IBIA 237 (July 6, 1983)

APPEAL (See also FLEADING, RECONSIDERATION--if included in this Index.)

Matters Considered on Appeal

Ordinarily the Board of Indian Appeals will not consider an issue raised for the first time on appeal. However, the Board has held that jurisdiction is a fundamental question and will be considered on appeal whether or not it was previously raised. This same reasoning will be applied whether it is the Department's jurisdiction that is being challenged or the jurisdiction of another judicial or quasi-judicial body upon whose decision the Department has relied.

Estate of James Werny Pekah, 11 IBIA 237 (July 6, 1983)

Standing to Appeal

A party to an Indian probate proceeding may file a notice of appeal with the Board of Indian Appeals under 43 CFR 4.320 from an order denying rehearing even though the petition for rehearing before the Administrative Law Judge was filed by another party.

Estate of James Werny Pekah, 11 IEIA 237 (July 6, 1983)

CHILDREN, ADOPTED (See also ADOPTION, INHERITING--if included in this Index.)

Right to InheritGenerally

The inheritance rights of an adopted child are determined by the law of the state in which trust real property is located.

Estate of Richard Doyle Two Falls, 11 IEIA 77 (Mar. 15, 1983)

INDIAN PROBATE--Continued

CHILDREN, ILLEGITIMATE (See also INHERITING--if included in this Index.)

Generally

The status of an Indian child as illegitimate and the required proof of paternity are questions of Federal law.

Larry E. Ruff v. Area Director, Portland Area Office, Bureau of Indian Affairs, 11 IBIA 267 (Aug. 8, 1983)

Right to InheritChild from Father

Under 25 U.S.C. § 371 (1976), an illegitimate Indian child is entitled to inherit from the person shown to be his father.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION Index.)

Source of Funds for Payment

Under 43 CFR 4.252, land remaining in Indian trust status after inheritance is liable for the payment of claims against the estate of the decedent only to the extent of income from its use. Trust funds held by the decedent or accrued to the estate at the time of death can be applied against claims regardless of whether that money will remain in trust after inheritance.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

COMPROMISE SETTLEMENTS

The Board of Indian Appeals will accept a proposed settlement agreement when it appears that the requirements of 43 CFR 4.207 have been met.

Estate of Dennis Gail Beaver, 11 IBIA 135 (Mar. 28, 1983)

The acceptance by an Administrative Law Judge of a compromise settlement meeting the requirements of 43 CFR 4.207(a) constitutes a final determination of the heirs of a deceased Indian.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT

The acceptance by an Administrative Law Judge of a compromise settlement meeting the requirements of 43 CFR 4.207(a) constitutes a final determination of the heirs of a deceased Indian.

It is error for the Bureau of Indian Affairs to lease land in the estate of a deceased Indian under 25 CFR 162.2(a)(3) on the grounds that the heirs of the estate are "undetermined" when an Administrative Law Judge has accepted a compromise settlement of the

INDIAN PROBATE--Continued

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT--Continued

estate entered into by all possible heirs and meeting the requirements of 43 CFR 4.207(a).

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

DIVORCE (See also CLAIM AGAINST ESTATE--if included in this Index.)

Generally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

EVIDENCEInsufficiency of

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Joseph Wyatt, 11 IBIA 244 (July 15, 1983)

Proof of Marriage

Under Montana law, the burden of proving that a relationship illicit in its inception changed into a lawful common law marriage is on the person asserting the validity of the marriage. Where there is proof showing a couple entered into a valid common law marriage following the divorce of one of the parties, the Board will find a marriage.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

HEARING (See also ADMINISTRATIVE PROCEDURE, REPEALING--if included in this Index.)

Generally

Notice of a hearing is not defective when notice was sent to the appellant at his last known address more than a month before the hearing, the letter was not returned, testimony of other individuals attending the hearing showed that appellant knew of the hearing, and appellant's notice of appeal shows on its face that he knew of the hearing.

Estate of Andrew Jackson, 12 IBIA 39 (Oct. 18, 1983)

Notice

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

INDIAN PROBATE--Continued

INHERITING (See also CHILDREN, ADOPTED; CHILDREN, ILLEGITIMATE; WILLS--if included in this Index.)

Generally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

Non-Indian

The Department of the Interior has no authority to hold land in Indian trust status for non-Indians. When non-Indians acquire Indian trust land through inheritance or devise, fee patent title should normally be transferred immediately to such individuals pursuant to 25 CFR 152.6.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

MARRIAGEGenerally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

Common Law

Under Montana law, the burden of proving that a relationship illicit in its inception changed into a lawful common law marriage is on the person asserting the validity of the marriage. Where there is proof showing a couple entered into a valid common law marriage following the divorce of one of the parties, the Board will find a marriage.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

NON-RESTRICTED PROPERTY

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

INDIAN PROBATE--Continued

REHEARING (See also ADMINISTRATIVE PROCEDURE, HEARING--if included in this Index.)

Generally

An appellant who attended the original Indian probate hearing into a decedent's estate, raised no objection to decedent's will at that hearing, and fails to present to the Administrative Law Judge or to the Board of Indian Appeals any substantiation for later objections or explanation for the lack of such substantiation has not shown adequate grounds for rehearing under 43 CFR 4.241.

Estate of Andrew Jackson, 12 IBIA 39 (Oct. 18, 1983)

REOPENINGGenerally

Under the provisions of 43 CFR 4.242(b), the burden of proving entitlement to reopening in Indian probate proceedings lies with the petitioner.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

Reopening of closed Indian probate proceedings is granted to allow the Department to investigate whether allegations, raised by a person who did not have knowledge of the original hearing and has diligently pursued the case since learning of potential rights, support the conclusion that the prior determination constitutes a manifest injustice that can be administratively corrected.

The Board of Indian Appeals has consistently held that petitions to reopen closed Indian trust estates require compelling proof that delay in requesting relief was not occasioned by lack of diligence on the part of the petitioning party.

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Joseph Wyatt, 11 IBIA 244 (July 15, 1983)

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elmer) Hail, 12 IBIA 62 (Nov. 10, 1983)

Standing to Petition for Reopening

The Superintendent is a proper party to seek reopening of a closed Indian estate under 43 CFR 4.242.

Estate of Helen Ward Willey, 11 IBIA 43 (Jan. 31, 1983)

A person who participated in the original probate proceeding lacks standing to petition to reopen the estate.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

INDIAN PROBATE--ContinuedREOPENING--ContinuedStanding to Petition for Reopening--Continued

An adult who participated in the original probate hearing into a deceased Indian's estate lacks standing to petition for reopening.

Estate of Julia Tieyah, 11 IBIA 211 (June 8, 1983)

SECRETARY'S AUTHORITYGenerally

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough-Brignone, 11 IBIA 179 (May 10, 1983)

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Wermey Pukah, 11 IBIA 237 (July 6, 1983)

STATE LAWGenerally

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough-Brignone, 11 IBIA 179 (May 10, 1983)

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Wermey Pukah, 11 IBIA 237 (July 6, 1983)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING-- if included in this Index.)

Disapproval of Will

Without some physical act by the testator expressly changing or revoking an Indian will, the Department is without authority to disapprove the will on the grounds that the testator intended to or did revoke the will.

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING-- if included in this Index.)--Continued

Disapproval of Will--Continued

The Department does not have the authority to disapprove a technically valid Indian will that evidences a rational testamentary scheme even though that scheme appears inequitable to an outsider.

Estate of Helen Ward Willey, 11 IBIA 43 (Jan. 31, 1983)

Holographic Will

A holographic will that is not attested by two disinterested witnesses is not valid.

Estate of Julia Tieyah, 11 IBIA 211 (June 8, 1983)

Revocation

Without some physical act by the testator expressly changing or revoking an Indian will, the Department is without authority to disapprove the will on the grounds that the testator intended to or did revoke the will.

Estate of Helen Ward Willey, 11 IBIA 43 (Jan. 31, 1983)

Testamentary CapacityGenerally

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

To invalidate an Indian will for lack of testamentary capacity, the evidence must show that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property. Furthermore, the evidence must show that this condition existed at the time of the execution of the will.

Estate of Samuel Tscodde, 11 IBIA 163 (Apr. 14, 1983)

Undue Influence

When the evidence does not show that influence was exerted on the testator at the time of the execution of the will or that the will was contrary to the testator's wishes, undue influence in the execution of the will cannot be found.

Under the circumstances of this case, the written statement of the scrivener of an Indian will concerning whether the testator was acting under undue influence, made at the time of the execution of the will, shall be given great weight in determining the testator's state of mind.

Estate of Samuel Tscodde, 11 IBIA 163 (Apr. 14, 1983)

INDIAN TRIBES

(See also Appeals, Indian Probate--if included in this Index.)

TREATIES

Article IX, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

INDIANSGENERALLY

The fundamental principle of statutory construction that words are to be taken in their ordinary meaning unless they are technical terms or words of art is particularly applicable in the construction of statutes concerning Indians.

Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

ADOPTION

An adoption is not normally considered a testamentary act and is not subject to the rules governing the execution of testamentary instruments. An otherwise proper adoption decree showing that the requirements of the jurisdiction rendering it were met will be recognized.

Estate of James Werny Pekah, 11 IBIA 237 (July 6, 1983)

EDUCATION

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 409a (1976), the funds used to purchase land to be held in trust in order to replace Indian trust or restricted lands taken for a public purpose or voluntarily sold by the Indian owner must

INDIANS--ContinuedFISCAL AND FINANCIAL AFFAIRS--Continued

be shown to have been derived from the price taking or sale of such trust or restricted lands.

Dora Joyce Friet v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983)

The Board of Indian Appeals is without jurisdiction to grant a request for attorney's fees that is not supported by a properly approved contract or statutory basis therefor.

Edmond H. Burns & Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IBIA 133 (Mar. 22, 1983)

WELFARE

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Because the list of specific types of assistance provided by the Bureau of Indian Affairs under the general assistance program is not a rule within the meaning of 5 U.S.C. § 551(4) (1976), the general assistance eligibility criteria published in 25 CFR Part 20 may be used in determining eligibility for custodial care assistance, even though Part 20 does not specifically indicate custodial care as a type of assistance available through the general assistance program.

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 110 (Dec. 9, 1983) 90 I.D. 536

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 116 (Dec. 9, 1983)

Speculation or presumptions concerning an individual's circumstances are insufficient to support a finding under 25 CFR 20.21(a) that the individual is not eligible for receipt of general assistance from the Bureau of Indian Affairs on the grounds that his or her needs are met by other resources.

The requirement in 25 CFR 20.11(b), that a recipient of assistance from the Bureau of Indian Affairs report any change in circumstances, is an administrative procedure, not an eligibility requirement.

Individuals may not be deprived of custodial care benefits provided by the Bureau of Indian Affairs solely on the basis of eligibility requirements set forth only in the Bureau of Indian Affairs Manual.

The Board of Indian Appeals will not force individuals to accept assistance from the Bureau of Indian Affairs that they have not shown they desire.

Henry W. Pegay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983) 90 I.D. 539

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

James H. W. Tsenj, 69 IBLA 387 (Jan. 4, 1983)

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

LIEU SELECTIONS

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

B. K. Herndon, 76 IBLA 353 (Oct. 24, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was

LIEU SELECTIONS--Continued

never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, FLM's refusal to exercise the discretionary authority to do so is proper.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

C. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

MILLSITES

(See also Mining Claims--if included in this Index.)

GENERALLY

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744 (1) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Richard Holland, 74 IBLA 167 (July 12, 1983)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied for mining or milling purposes. The use of improvements on millsites as a base for occasional sampling or testing activities on associated patented lode claims and the intent to use the millsites in the future, when and if market conditions are favorable, do not satisfy the statutory requirements.

United States v. Louis L. Osmer, Jr., et al., 76 IBLA 59 (Sept. 21, 1983)

MILLSITES--Continued

GENERALLY--Continued

Where it is confirmed that a locator of a millsite claim had filed a formal abandonment of the millsite claim with the local county recorder's office, the original millsite location no longer is a valid millsite requiring annual filings of a notice of intention to hold the site under FLPMA, and BLM properly declared the claim invalid.

Matthews Scientific Corp., 76 IBLA 280 (Oct. 18, 1983)

DETERMINATION OF VALIDITY

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied for mining or milling purposes. The use of improvements on millsites as a base for occasional sampling or testing activities on associated patented lode claims and the intent to use the millsites in the future, when and if market conditions are favorable, do not satisfy the statutory requirements.

United States v. Louis L. Osmer, Jr., et al., 76 IBLA 59 (Sept. 21, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

MINERAL LANDS

GENERALLY

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 68 (Dec. 16, 1983)

DETERMINATION OF CHARACTER OF

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Lee H. Rice, Goldie F. Rice, 73 IBLA 128 (May 23, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Murer, 75 IBLA 232 (Aug. 23, 1983)

A conveyance for public lands carries with it an implied affirmation of every necessary prerequisite. After the Secretary of the Interior has decided that any particular land is not mineral in character and has approved conveyance thereof on that basis, the transfer of title is not vitiated by the subsequent discovery of minerals.

George Antunovich, John F. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.R. 464

LEASES

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

MINERAL RESERVATION

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

MINERAL LANDS--Continued

NONMINERAL ENTRIES

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

Bureau of Land Management properly rejects a desert land entry as to land within a material site because such land is known to contain minerals and mineral lands are excluded from desert land entry.

Norma L. McBride, 73 IBLA 165 (May 24, 1983)

PROSPECTING PERMITS

"Extension." An extension of a prospecting permit is a prolongation of the term of the previous interest. Accordingly, it commences as of the expiration date of the primary term of the permit.

Asarco, Inc., 70 IBLA 91 (Jan. 11, 1983)

Where, pursuant to 43 CFR Part 3510, BLM grants 2-year extensions to hardrock mineral prospecting permits on certain acquired lands within a national forest, but delays approval of the extensions until from 9 to 19 months have elapsed after the expiration of the original permits, and then dates the extensions from the terminal date of the original permits, the permits will be deemed to have been suspended during the period between the expiration date of the original permits and the granting of the extensions, so that the permittee may have a full 2-year term for prospecting.

ASARCO, Inc., 72 IBLA 110 (Apr. 14, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Where, pursuant to 43 CFR 3510, BLM grants a 2-year extension to a hardrock mineral prospecting permit, but delays approval of the extension for 15 months after the expiration of the original permit and then dates the extension from the terminal date of the original permit, the permit will be deemed to have been suspended during the period between the expiration date of the original permit and the granting of the extension, so that the permittee may have a full 2-year term for prospecting.

UOP, Inc., 74 IBLA 54 (June 29, 1983)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

Where a regulation authorizes BLM's request for certain information regarding a competitive phosphate lease application and a notice to the applicant states that failure to file such information within 60 days will subject the application to rejection, BLM may reject the application at the conclusion of the 60-day term in the absence of a filing extension.

GeoResources, Inc., 74 IBLA 236 (July 19, 1983)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

Where, pursuant to 43 CFR Part 3510, BLM grants a 2-year extension to a hardrock mineral prospecting permit on certain acquired lands within a national forest, but delays approval of the extension until 17 months have elapsed after the expiration of the original permit, and then dates the extension from the terminal date of the original permit, the permit will be deemed to have been suspended during the period between the expiration date of the original permit and the granting of the extension, so that the permittee may have a full 2-year term for prospecting.

Czark-Mahoning Co., 74 IBLA 355 (July 28, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

The Department of the Interior has no authority to issue permits or leases for the exploration or mining of hard rock minerals in land acquired by and held under the jurisdiction of the Department of the Army.

George S. Crawford, 75 IBLA 290 (Aug. 26, 1983)

BLM may properly reject a hardrock prospecting permit application where the land description by legal subdivision is inaccurate (as well as ambiguous) in that the applicant refers to the NW 1/2 SE 1/4 SE 1/4 and the SE 1/2 SE 1/4 and the land has been surveyed under the rectangular system of public land surveys and the description can be conformed thereto, as provided by 43 CFR 3501.2-4(a).

Czark-Mahoning Co., 76 IBLA 294 (Oct. 18, 1983)

MINERAL LEASING ACT

(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)

GENERALLY

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act of 1976, are at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act.

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation or where such provisions are in accordance with the proper administration of the lands.

Coastal States Energy Co., 70 IBLA 386 (Feb. 9, 1983)

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

Noranda Exploration, Inc., 71 IBLA 9 (Feb. 10, 1983)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Franklin Real Estate Co., 71 IBLA 13 (Feb. 10, 1983)

Northern Minerals Co., Northern Coal Co., 71 IBLA 129 (Mar. 7, 1983)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 71 IBLA 92 (Feb. 24, 1983)

MINERAL LEASING ACT--ContinuedGENERALLY--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

E. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands

MINERAL LEASING ACT--Continued

GENERALLY--Continued

that do not unreasonably interfere with the exploration and mining operations of the lessee.

Under 43 CFR 3451.2, readjustment of a coal lease becomes effective 60 days after the lessee is notified of the readjusted terms, except where the authorized officer has required the lessee to furnish information specified in 43 CFR 3422.3-4 for review by the Attorney General. While compliance may be postponed pending review of a lessee's objections, liability for increased rental or royalty accrues from 60 days after initial notification of the readjusted terms.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

Where, on appeal, the fair market valuation of an area involved in a competitive phosphate lease offer is challenged in general terms, but no specific evidence of error is presented, and the record supports the evaluation, that evaluation will not be disturbed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

Coal lease issued prior to the enactment of the Federal Coal Leasing Amendments Act is at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act. A decision by BLM to readjust coal leases to include requirements mandated by statute and regulation will be affirmed.

Where the Bureau of Land Management has provided the lessee with a notice of intent to readjust a coal lease and specific terms and conditions of the readjusted lease, and has established that the effective date of those readjustments shall be the twentieth anniversary date of the lease, postponing administration of those terms and conditions pending review of the lessee's protest is not inconsistent with requirements for readjustment or untimely application of the terms and conditions by BLM.

FMC Corp., 74 IBLA 389 (July 29, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 76 IBLA 312 (Oct. 19, 1983)

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 are, at the time of readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

When notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, and such notice prescribes a specific date when readjusted lease terms shall be transmitted to the lessee, BLM's subsequent failure to transmit the readjusted lease terms within the time specified in the notice constitutes a waiver of the right to readjust the lease.

Kaiser Steel Corp., 76 IBLA 387 (Oct. 27, 1983)
90 I.L. 470

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand on oil and gas leases issued prior to Nov. 16, 1981. A lessee seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

MINERAL LEASING ACT--Continued

CONSENT OF AGENCY--Continued

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where ELM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Strcock, 77 IELA 137 (Nov. 15, 1983)

ENVIRONMENT

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

John D. Archer, 74 IELA 323 (July 28, 1983)

LANDS SUBJECT TO

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IELA 324 (Jan. 31, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

F. C. Minkler, 71 IELA 328 (Mar. 23, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

CAF Co., 73 IELA 203 (May 27, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leaseable

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981).

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. M. Yates, 76 IBLA 208 (Oct. 11, 1983)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James M. Chudnow, 70 IBLA 150 (Jan. 18, 1983)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Joseph C. Manga, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Joe E. Shelton, 73 IBLA 250 (June 2, 1983)

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY--Continued

supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Askins, 74 IBLA 12 (June 24, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

Sam E. Jones, 74 IBLA 242 (July 19, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where ELM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Strcck, 77 IBLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, ELM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. ELM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

Donald Ernest Willkens, 77 IBLA 144 (Nov. 15, 1983)

LANDS SUBJECT TO

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

C. H. Nicholson, 75 IBLA 234 (Aug. 23, 1983)

MINING CLAIMS

(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the

MINING CLAIMS--ContinuedGENERALLY--Continued

amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

John Loskot, 71 IBLA 165 (Mar. 10, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management denies a mine plan of operations for mining claims located in a wilderness study area on the basis that the proposed open pit operation would impair the naturalness of the study area, the denial will be upheld where the mining claimant fails to establish error in the determination.

Keith R. Kummerfeld, 72 IBLA 1 (Apr. 4, 1983)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

MINING CLAIMS--ContinuedGENERALLY--Continued

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d) (3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

H. F. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie F. Rice, 73 IBLA 128 (May 23, 1983)

A decision by BLM disapproving plans of operations concerning mining claims located within wilderness study areas will be upheld where BLM's determination, pursuant to 43 Subpart 3802, that proposed operations would impair the suitability of the study areas for preservation as wilderness is reasonable based on the record and the mining claimant fails to present any new, relevant information in support of an appeal from BLM's decision.

Mining plans of operations concerning claims or portions thereof located outside a wilderness study area are properly evaluated under the surface management provisions of 43 CFR Subpart 3809, rather than under the provisions governing lands under wilderness review contained in 43 CFR Subpart 3802.

Keith R. Kummerfeld, 74 IBLA 106 (June 30, 1983)

Where a corporation seeking a mineral patent files a certificate showing incorporation under the laws of a state, such corporation has established its citizenship within the meaning of the Mining Law of 1872, and a conclusive presumption thereby arises that all stockholders of the corporation are citizens of the United States, regardless of whether this is true or not.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management rejects a plan of operations for drilling on mining claims located in a wilderness study area on the basis that the proposed operation would impair the naturalness of the study area, the rejection will be

MINING CLAIMS--ContinuedGENERALLY--Continued

upheld where the mining claimant fails to establish error in the determination.

Golden Triangle Exploration Co., 76 IBLA 245 (Oct. 17, 1983)

Where the Bureau of Land Management declares various lode mining claims null and void because the owner of record is not a United States citizen and, on appeal, evidence is submitted showing that the claims are currently owned in part by United States citizens, the decision will be reversed.

J. Garth Woodworth, 78 IBLA 112 (Dec. 22, 1983)

ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

David F. Matuszak, 70 IBLA 11 (Jan. 6, 1983)

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Erna Jellen, Suzanne K. Marco, 70 IBLA 29 (Jan. 6, 1983)

William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)

Gerwin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Robert Paoluccio, II et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

William E. Day, 72 IBLA 364 (May 2, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Githa T. Navo, 73 IBLA 277 (June 7, 1983)

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)

Les Saulsberry, 74 IBLA 223 (July 18, 1983)

Joe V. Andersen, Art Rubash, Estate of Don I. Andersen, 75 IBLA 71 (Aug. 10, 1983)

Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

John D. Powers, 75 IBLA 266 (Aug. 26, 1983)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

F. R. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

Cliff Sasselli, 76 IBLA 8 (Sept. 6, 1983)

Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)

Henry Allen, Harold Dils, 76 IBLA 14 (Sept. 6, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Lydia Darlene Shears, 76 IBLA 148 (Sept. 26, 1983)

Farrell D. Clontz, 76 IBLA 180 (Oct. 3, 1983)

Michael J. Fouse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

Grace P. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Minerco, Inc., 69 IBLA 379 (Jan. 4, 1983)

Myron S. Kenyon, 73 IBLA 10 (May 5, 1983)

Las Vegas Portland Cement, Inc., 75 IBLA 104 (Aug. 11, 1983)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does

MINING CLAIMS--Continued

ABANDONMENT--Continued

not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Penzoa, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively

MINING CLAIMS--Continued

ABANDONMENT--Continued

constitutes an abandonment of the mining claim by the owner.

Vance W. Dighans, Leon S. Wright, 69 IELA 394 (Jan. 4, 1983)

Donna Bernhardt, 73 IELA 207 (May 27, 1983)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Dearyl Riley, 70 IELA 33 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Donald C. Strider, 70 IELA 36 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work, notice of intention to hold the mining claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does

MINING CLAIMS--ContinuedABANDONMENT--Continued

not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

R. R. Meitler, Alfred Babineau, Hiel Crum, 70 IBLA 42 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year. This requirement is mandatory, and failure to comply is conclusively deemed to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently neglects to file with the Bureau of Land Management his affidavit of annual assessment work, which otherwise was properly recorded in the county, the claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Egenhoff, 70 IBLA 49 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land before Oct. 21, 1976, must file a copy of the location notice and evidence of assessment work with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and evidence of assessment work performed or a notice of intention to hold the claim on or before Dec. 30 of every year hereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or a notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

MINING CLAIMS--ContinuedABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Where a mining claim was located in Sept. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Jack Devault, Dorothy Devault, 72 IBLA 324 (Apr. 28, 1983)

Raymond J. Garcia, 75 IBLA 346 (Aug. 31, 1983)

William L. Hanley, 76 IBLA 93 (Sept. 21, 1983)

Where a mining claim was located in Dec. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Cletius G. Rogers, 73 IBLA 1 (May 5, 1983)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several claims from his affidavit of annual assessment work which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wilbur R. Parsons, 73 IBLA 6 (May 5, 1983)

Where a mining claim was located in Dec. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Homestake Mining Co., 73 IBLA 117 (May 23, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

There is an established legal presumption, which is rebuttable, that official acts of public officers

MINING CLAIMS--ContinuedABANDONMENT--Continued

are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where ELM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that ELM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the ELM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of a mining claim from the affidavit of annual assessment work, which otherwise was properly recorded both in the county and with ELM, the omitted claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William J. Ecch, 73 IBLA 274 (June 7, 1983)

Norma H. Campbell, 73 IBLA 390 (June 15, 1983)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by

MINING CLAIMS--ContinuedABANDONMENT--Continued

his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCO Services, 73 IBLA 374 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims prior to Dec. 31 of each year following the calendar year in which the claims were located. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

J. Bradley Smith, 73 IBLA 398 (June 15, 1983)

J. L. Shinn, 74 IBLA 226 (July 18, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. The filing must be made both in the county where the location notice is recorded and in the proper office of BLM. Where evidence is introduced showing that the notice of intention to hold was recorded timely in the county and with BLM, a BLM decision declaring the unpatented mining claim abandoned and void will be vacated.

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may

MINING CLAIMS--ContinuedABANDONMENT--Continued

not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Richard Holland, 74 IELA 167 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims with ELM by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. Pursuant to 43 CFR 3833.0-5(n), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper ELM office by Jan. 19 immediately following.

Arthur A. Toczko, 74 IELA 221 (July 18, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, a notice of intention to hold the claim or evidence of the performance of assessment work, both in the county where the location notice is of record and in the proper office of ELM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of ELM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Robert E. Pauer, 75 IELA 62 (Aug. 5, 1983)

L. C. Carter et al., 76 IELA 90 (Sept. 21, 1983)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of ELM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of ELM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gustin C. C. H. R. Caspersen, 75 IELA 100 (Aug. 11, 1983)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Where mining claims were located in May 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claims or evidence of assessment work performed on the claims during 1981, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claims.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Fredrick A. Rogers, 75 IBLA 332 (Aug. 30, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required

MINING CLAIMS--ContinuedABANDONMENT--Continued

by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

James Camp, 76 IBLA 96 (Sept. 21, 1983)

Where a mining claim was located in Mar. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. J. Glass, 76 IBLA 215 (Oct. 17, 1983)

Where a mining claim was located in Apr. 1981, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1982, a notice of intention to hold the claim or evidence of assessment work performed on the claim during 1982, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instrument within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

John Milner, 76 IBLA 221 (Oct. 17, 1983)

Where a mining claim was located in Feb. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required

MINING CLAIMS--ContinuedABANDONMENT--Continued

by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

Where mining claims were located in Sept. and Oct. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claims or evidence of performance of assessment work on the claims, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim. For mining claims located in Aug. 1981, the requirement for first recordation of a notice of intention to hold the claim or proof of assessment work performed with the Bureau of Land Management became effective in 1982.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of Bureau of Land Management, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Edmund J. Cwan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the notice of location. This requirement is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting

MINING CLAIMS--ContinuedABANDONMENT--Continued

the statute, Congress did not invest the Secretary of the Interior with authority to waive the requirements of the Act, or to afford claimants any relief from the statutory consequences.

Harold A. Hinkle, Michael B. Hinkle, Thomas J. Fetter, 77 IBLA 152 (Nov. 16, 1983)

Where copies of location notices of mining claims were filed with the Bureau of Land Management in 1977 before promulgation of regulations pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and where BLM later called upon the claim owner to pay the required filing fees, without setting a time limit for compliance, it is error for BLM to reject the mining claim filings because the first check submitted for payment of the filing fees was returned as uncollectible, although the claim owner had replaced that check with a guaranteed remittance upon notification.

Bamcc Exfiltration, Inc., 77 IBLA 226 (Nov. 28, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

ASSESSMENT WORK

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the claim. A petition will not be granted where a claimant alleges that it would be financially impractical because of pending legislation or alleges that public sentiment is against such entry.

Minerals Engineering Co., 71 IBLA 402 (Mar. 31, 1983)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the required filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and local office of the state where the notices of location were filed.

Arthur R. Fields, Sr., 73 IBLA 52 (May 12, 1982)

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), annual assessment work for mining claims may only be deferred for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

J. M. Glenn d.b.a. Northwest Mineral Exfiltration, 73 IBLA 323 (June 7, 1983)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

The accomplishment of the minimum of the \$500 worth of improvements on a mining claim, as required by 30 U.S.C. § 29 (1976), neither terminates nor substantially satisfies the requirement of 30 U.S.C. § 28 (1976) that \$100 worth of labor be performed on the claim each year until patent issues. Nor is there substantial compliance with sec. 28 where for considerably more than half of the total number of years in which the performance of annual labor was required, none was done.

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Where the requirement of filing proof of assessment work or a notice of intention to hold the claim applies, such filing must be made within each calendar year, i.e., on or after Jan. 2, and on or before Dec. 30.

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

COMMON VARIETIES OF MINERALS

Generally

The standards set forth in United States v. U.S. Minerals Development Corp., 75 I.D. 127 (1968), as modified by McClarty v. Secretary of Interior, 408 F.2d 907 (9th Cir. 1969), are applicable in determining whether a particular substance is a common variety of mineral.

Frank Melluzzo, 71 IBLA 178 (Mar. 10, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a distinct and special value reflected in a higher market price or reduced cost of production.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

MINING CLAIMS--Continued

CONTESTS

When the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. Richard S. Arbc., 70 IBLA 244 (Jan. 25, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Helen Rosenberger, 71 IBLA 195 (Mar. 14, 1983)

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in these samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a winze free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is

MINING CLAIMS--Continued

CONTESTS--Continued

justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegate this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

Where a Government mineral examiner examines a mining claim and takes samples there, and, after considering the amount and value of mineralization and the costs of conducting a mining operation, testifies to the effect that, in his opinion, a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the claim the Government has established a prima facie case of no discovery.

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

A request by a mining claimant to drill on mining claims after the land has been withdrawn from mining is properly denied where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values

MINING CLAIMS--Continued

CONTESTS--Continued

insufficient to support the discovery of a valuable deposit.

United States v. William Layton Charrell et al., 72 IBLA 88 (Apr. 13, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

When the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCC Services, 73 IBLA 374 (June 15, 1983)

If a lode mining claim is supported by a discovery, it necessarily follows that the land is mineral in character. If a claim is not supported by a discovery, it is invalid and it would be immaterial whether the land is mineral in character. In any event, the tests for determining the mineral character of land and whether a discovery of a valuable mineral deposit has been made are essentially the same.

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining

MINING CLAIMS--Continued

CONTESTS--Continued

claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pcol et al., 74 IBLA 37 (June 27, 1983)

Where a stipulation as to the admissibility of various assay results is made by the Government and a mineral contestee, and the contestee clearly asserts his view as to the scope of the stipulation, it is the obligation of the attorney for the Government, if his interpretation differs, to clearly state his view so as to put the contestee on notice as to this conflict. Where this is not done, the stipulation will be enforced in accordance with the contestee's understanding.

United States v. J. Gary Feezor et al., 74 IBLA 56 (June 29, 1983) 90 I.L. 262

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

An owner of a mining claim who purports to represent the interests of other co-owners may only properly represent the interests of other claim holders if such owner meets one of the qualifications set out in 43 CFR 1.3(b).

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however,

MINING CLAIMS--Continued

CONTESTS--Continued

the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IFIA 90 (Nov. 14, 1983)

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Jack R. & Ruth V. Niece, 77 IFIA 205 (Nov. 22, 1983)

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IFIA 155 (Dec. 29, 1983)

DETERMINATION OF VALIDITY

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recording of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Helen Rosenberger, 71 IBLA 195 (Mar. 14, 1983)

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in those samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a winze free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

Where a Government mineral examiner examines a mining claim and takes samples there, and, after considering the amount and value of mineralization and the costs of conducting a mining operation, testifies to the effect that, in his opinion, a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the claim the Government has established a prima facie case of no discovery.

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and

MINING CLAIMS--ContinuedDETERMINATION OF VALIDITY--Continued

where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

United States v. Joseph Laczowski & Eula G. Jones (McIntney), 71 IBLA 364 (Mar. 28, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

A discovery exists where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Robert J. King, L. K. Hollenbeck, 72 IBLA 75 (Apr. 12, 1983)

M. Joan Bryan, Michael Ralovich, 76 IBLA 192 (Oct. 6, 1983)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

MINING CLAIMS--ContinuedDETERMINATION OF VALIDITY--Continued

The validity of mining claims located for deposits of tar sand must be established under the general principles of the mining laws, including those related to abandonment and performance of annual assessment work. Congress provided no special recognition of tar sand as a valuable mineral deposit. If tar sand mining claims are found to be placer locations for lode deposits, the owner may apply for conversion to a combined hydrocarbon lease under 30 U.S.C. § 226(k) if the claims are otherwise valid.

Crem Development Co. v. Leo Calder (On Reconsideration), A-266C4 (Apr. 25, 1983) 90 I.L. 223

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee's case must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pcol et al., 74 IBLA 37 (June 27, 1983)

The accomplishment of the minimum of the \$500 worth of improvements on a mining claim, as required by 30 U.S.C. § 29 (1976), neither terminates nor substantially satisfies the requirement of 30 U.S.C. § 28 (1976) that \$100 worth of labor be performed on the claim each year until patent issues. Nor is there substantial compliance with sec. 28 where for considerably more than half of the total number of years in which the performance of annual labor was required, none was done.

A discovery of oil shale can be based upon a surface exposure or outcrop of even "lean" kerogen content provided that, based upon geologic inference, such exposure reasonably may be followed within the limits of the claim to rich deposits at depth. Unless part of the Parachute Creek member of the Green River Formation, however, rock which will not yield 3 gallons of oil per ton cannot be regarded as "oil shale," as distinguished from other common forms of oil-bearing rock, and surface exposures of such material will not constitute a discovery of oil shale.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that ELM's decision was in error.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IEIA 16 (Aug. 5, 1983) 90 I.R. 352

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IEIA 90 (Nov. 14, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Niece, 77 IEIA 205 (Nov. 22, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

distinct and special value reflected in a higher market price or reduced cost of production.

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

DISCOVERY

Generally

Isolated showings of high gold and silver values are not sufficient by themselves to establish the discovery of a valuable mineral deposit.

United States v. Albert J. Wells, 69 IBLA 363 (Jan. 3, 1983)

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestant in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Belen Rosenberger, 71 IBLA 195 (Mar. 14, 1983)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in those samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a winze free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle C. Cock et al., 71 IBLA 268 (Mar. 22, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

A discovery exists where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

valid thereafter even by the satisfaction of the discovery requirement at a later date.

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

Isolated showings of high gold values are not sufficient by themselves to establish the discovery of a valuable mineral deposit.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. McMillen, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pol et al., 74 IBLA 37 (June 27, 1983)

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means a mining claimant must show that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however,

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Niece, 77 IBLA 205 (Nov. 22, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a distinct and special value reflected in a higher market price or reduced cost of production.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

Geologic Inference

While geologic inference cannot be used to show the existence of a mineral deposit, where an exposure exists which shows high and relatively consistent values, geologic inference can be used to infer sufficient quantity of similar quality mineralization beyond the actual exposed areas, such that a prudent man would be justified in expending labor and means with a reasonable prospect of success in developing a paying mine.

Where the evidence of record shows that the results obtained by surface sampling are unreliable as a basis upon which to predicate estimates of a value at depth, such sample cannot serve as a factual predicate for inferring an extension beyond the exposed area.

United States v. J. Gary Feezor et al., 74 IBLA 56 (June 29, 1983) 90 I.D. 262

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGeologic Inference--Continued

A discovery of oil shale can be based upon a surface exposure or outcrop of even "lean" kerogen content provided that, based upon geologic inference, such exposure reasonably may be followed within the limits of the claim to rich deposits at depth. Unless part of the Parachute Creek member of the Green River Formation, however, rock which will not yield 3 gallons of oil per ton cannot be regarded as "oil shale," as distinguished from other common forms of oil-bearing rock, and surface exposures of such material will not constitute a discovery of oil shale.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Marketability

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means a mining claimant must show that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

HEARINGS

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

United States v. Joseph Laczkowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

MINING CLAIMS--ContinuedHEARINGS--Continued

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Where a notice of intent to hold a hearing pursuant to 30 U.S.C. § 621(b) and 43 CFR 3736.1(b), when transmitted and received by the locators of the claims at issue, correctly identifies all locators of record as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to participate in the hearing will not vitiate that hearing.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

LANDS SUBJECT TO

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Grooms, 70 IBLA 228 (Jan. 24, 1983)

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

MINING CLAIMS--ContinuedLANDS SUBJECT TO--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void ab initio.

John F. Pasak et al., 71 IBLA 334 (Mar. 28, 1983)

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Robert J. King, L. K. Hollenbeck, 72 IBLA 75 (Apr. 12, 1983)

Hansen Properties, Inc., 74 IBLA 364 (July 28, 1983)

M. Jean Bryan, Michael Rabatich, 76 IBLA 192 (Oct. 6, 1983)

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

E. W. Coreland, 75 IBLA 87 (Aug. 11, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d) (3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

H. E. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

"Notation rule." Under the notation rule, where land is segregated from mineral entry under the general mining laws and that segregation is noted on the official Bureau of Land Management records, mineral location is foreclosed until the record is changed to reflect that the land is no longer segregated.

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

BLM may properly reject a mineral patent application to the extent it includes land embraced in a patent without a mineral reservation to the United States.

Nels Swanberg, Margaret Swanberg, 74 IBLA 249 (July 22, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

New Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

Land which has been granted and approved to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio.

The final approval of a list of state selected lands ended the Department's authority to resolve conflicting claims to those lands, including its authority to recognize the validity of mining claims situated thereon.

George Antunovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lands segregated by Acts of Congress from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada are not available for location of mining claims where the Commission submitted a timely application for conveyance of the lands to the State in accordance with provisions of the Acts.

Malcolm L. Figert, Leonard Weiner, 77 IBLA 160 (Nov. 16, 1983)

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

(1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Mining claims located on land patented without a mineral reservation to the United States are properly declared null and void ab initio.

Ronald B. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

LOCATION

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Dearyl Riley, 70 IELA 33 (Jan. 7, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IELA 231 (Jan. 25, 1983)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IELA 131 (Mar. 9, 1983)

MINING CLAIMS--ContinuedLOCATION--Continued

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

No amended location of a mining claim is possible if the original location was void.

Frank Melluzzo, 71 IBLA 178 (Mar. 10, 1983)

All placer mining claims must conform as nearly as practicable with the public survey system. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

LODE CLAIMS

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

Frank Melluzzo, 71 IBLA 178 (Mar. 10, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

Orem Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

MINING CLAIMS--ContinuedMARKETABILITY

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

United States v. Eva M. Pocol et al., 74 IBLA 37 (June 27, 1983)

MILLSITES

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744 (b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Richard Holland, 74 IBLA 167 (July 12, 1983)

MINERAL LANDS

If a lode mining claim is supported by a discovery, it necessarily follows that the land is mineral in character. If a claim is not supported by a discovery, it is invalid and it would be immaterial whether the land is mineral in character. In any event, the tests for determining the mineral character of land and whether a discovery of a valuable mineral deposit has been made are essentially the same.

United States v. Eva M. Pocol et al., 74 IBLA 37 (June 27, 1983)

PATENT

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where applicant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

It is proper to reject an application for mineral patent where the official records disclose that the alleged claims have been conclusively determined to be abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Mineral Investigation & Development Co., 71 IBLA 396 (Mar. 31, 1983)

MINING CLAIMS--ContinuedPATENT--Continued

A mineral patent applicant must support his application with a certificate or abstract of title. 43 CFR 3862.1-3(a).

Where an applicant for a mineral patent has been requested to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the application without prejudice to applicant's right to submit a proper and complete application in the future.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The Bureau of Land Management properly determines the acreage of mining claims that have been conformed to surveyed legal subdivision of the township by reference to its official land status records.

The Bureau of Land Management properly reserves to the United States in a mineral patent for O & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

PLACER CLAIMS

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

Under the provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), a person authorized to enter lands under the mining laws of the United States may enter lands chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.

Frank Melluzzo, 71 IBLA 178 (Mar. 10, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to

MINING CLAIMS--ContinuedPLACER CLAIMS--Continued

a faulty hearing transcript, the decision will be set aside.

Orem Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

All placer mining claims must conform as nearly as practicable with the public survey system. 43 CFR 3842.1-2.

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

Under 30 U.S.C. § 36 (1976), an association placer location must embrace contiguous tracts of land. Lands which merely corner each other are not contiguous under this provision.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

An association of claimants may locate an association placer claim encompassing up to 160 acres. The permissible size of the claim is dictated by the number of parties in the association. No such location shall include more than 20 acres for each individual claimant.

If the persons locating placer mining claims form a corporation with each owning stock in proportion to their claims, the locations are not invalid. However, if persons merely lend their names to a corporation in order to enable it to acquire more ground than is allowed, the locations are invalid. The policy and objective of 30 U.S.C. § 35 (1976) is to limit the quantity of placer mineral land which may be located by one person to 20 acres per claim. The corporation can not be looked upon as an association, as contemplated by 30 U.S.C. § 35 (1976).

Any scheme or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim in area more than 20 acres constitutes a fraud upon the Government, from which title is to be acquired, and any location made pursuant to such scheme or device is without legal support and void.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

POWERSITE LANDS

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn

MINING CLAIMS--ContinuedPOWERSITE LANDS--Continued

for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IBLA 81 (Dec. 16, 1983)

RECORDATION

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

MINING CLAIMS--ContinuedRECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee of \$5. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Where mining claims are located between July 8 and July 18, 1982, and copies of the location notices are submitted to the Bureau of Land Management Oct. 14, 1982, without the required service fees, there is no recordation within the 90 days allowed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Vance W. Dighans, Leon S. Wright, 69 IBLA 394 (Jan. 4, 1983)

Where mining claims were located July 18 and 20, 1982, and a copy of the official record of the notices of location was not filed with the proper office of the Bureau of Land Management within 90 days thereafter, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

David F. Matuszak, 70 IBLA 11 (Jan. 6, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Andersson et al., 70 IBLA 122 (Jan. 13, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the state recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Erna Jellen, Suzanne K. Marco, 70 IBLA 29 (Jan. 6, 1983)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Dearyl Riley, 70 IBLA 33 (Jan. 7, 1983)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 31 of each calendar year following the year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Gerwin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

Where a proof of labor for unpatented mining claims was tendered to the proper office of the Bureau of Land Management prior to Oct. 22, 1979, for mining claims located before Oct. 21, 1976, the requirement of the Federal Land Policy and Management Act of 1976 was satisfied, even though the notices of location for the mining claims had not yet been filed for record with BLM.

Jay Edwin Collier, 70 IBLA 283 (Jan. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

Where it benefits the affected party to do so, a mining claim recordation regulation which is amended while the matter is pending may be applied in its

MINING CLAIMS--ContinuedRECORDATION--Continued

amended form only where there are no intervening right which will be adversely affected.

Joseph L. Bush, Betty Bush, 71 IBLA 324 (Mar. 23, 1983)

When a mining claim owner files a proof of labor for assessment work performed in 1977 or 1979 with the proper office of the Bureau of Land Management in 1980, he has not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the claims are properly declared abandoned and void.

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where there is no evidence that assessment work was performed, the consequence must be borne by the claimant.

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Alfred E. Malech, 72 IBLA 223 (Apr. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

Eleanor A. Felser, 72 IBLA 232 (Apr. 26, 1983)

Jacqueline Falen, 73 IBLA 383 (June 15, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of unpatented mining lode or placer mining claims located after Oct. 21, 1976, must file in the proper BLM office within 90 days after the location of such claims, a copy of the official record of the notice or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owner, and they are properly declared void.

Thomas C. Hall, 72 IBLA 319 (Apr. 28, 1983)

Herbert Cilch, 73 IBLA 171 (May 24, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Joe V. Andersen, Art Rubash, Estate of Don T. Andersen, 75 IBLA 71 (Aug. 10, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

H. R. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment is not filed timely because it was lost in the mail, the consequences must be borne by the claimant.

David L. Gelis, 72 IBLA 327 (Apr. 28, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claim was located in Sept. 1964 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William E. Ray, 72 IBLA 364 (May 2, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

George F. Newcomb, 73 IBLA 104 (May 23, 1983)

Hunting Mining Co., 73 IBLA 270 (June 7, 1983)

Githa T. Navc, 73 IBLA 277 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Paul F. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Bruce Naylor, Bill Farney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Shirley Fomerinke, 74 IBLA 210 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bengoa, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Milford R. Fribble, 75 IBLA 174 (Aug. 19, 1983)

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

John D. Dowers, 75 IBLA 266 (Aug. 26, 1983)

Henry Allen, Harold Dils, 76 IBLA 14 (Sept. 6, 1983)

Charles Mayc, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Lydia Darlene Shears, 76 IBLA 148 (Sept. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Grace F. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Hiko Bell Mining & CIL Co., 76 IBLA 254 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was lost in the mail, the consequence must be borne by the claimant.

Gary E. Mertle, 73 IBLA 4 (May 5, 1983)

Robert B. Hicks, 73 IBLA 145 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, had to file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the notice of intention to hold or evidence of assessment work was not timely filed, the claim is properly declared abandoned.

Arthur R. Fields, Sr., 73 IBLA 52 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or to

MINING CLAIMS--Continued

RECORDATION--Continued

afford claimants any relief from the statutory consequences.

Charles F. Bean, 73 IBLA 108 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

A. K. Flcreez, 73 IBLA 142 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Dan Lovelady, 73 IBLA 190 (May 26, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCC Services, 73 IBLA 374 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

Dan Walker, 74 IBLA 153 (July 12, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year after the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Page Investment Co., 74 IBLA 163 (July 12, 1983)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Richard Holland, 74 IBLA 167 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Les Saulsberry, 74 IBLA 223 (July 18, 1983)

Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of BLM. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the

MINING CLAIMS--Continued

RECORDATION--Continued

statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

David R. Mathews, 74 IBLA 320 (July 28, 1983)

Where mining claims are located on public land that is subsequently transferred to the State of Utah, the Department of the Interior has no further interest in or control over that land, and a mining claimant is not required to comply with the recordation and filing requirements of the Federal Land Policy and Management Act of 1976.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Gordon J. Blake et al., 75 IBLA 1 (Aug. 2, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, because it was lost in the mail, the consequence must be borne by the claimant.

Delbert A. Reese, 75 IBLA 74 (Aug. 10, 1983)

Rachel G. Cconover, 75 IBLA 323 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary.

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on Federal lands must file a notice of intention to hold this claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Michael J. Rcuse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal

MINING CLAIMS--ContinuedRECORDATION--Continued

Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Cliff Sasselli, 76 IBLA 8 (Sept. 6, 1983)

Farrell D. Clontz, 76 IBLA 180 (Oct. 3, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. Thus, where claims were located in July 1981, notice of intention to hold or a proof of labor had to be filed with BLM prior to Dec. 31, 1982. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented millsite located after Oct. 21, 1976, must file a copy of the location notice with the Bureau of Land Management within 90 days after location. There is no statutory requirement that subsequent yearly notices of intention to hold the millsite be filed with BLM. The regulations, 43 CFR 3833.2-1(d), require that a notice of intention to hold the millsite claim be filed with BLM on or before Dec. 30 of the year following recordation of the millsite with BLM.

Eleanor A. Hill, 76 IBLA 234 (Oct. 17, 1983)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

New Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 21, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Edmund J. Cowan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Sniffer #2 Partnership, 76 IBLA 362 (Oct. 24, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of assessment work on the claim by Oct. 22, 1979. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The owner of a mining claim located after Oct. 21, 1976, must file a copy of the notice of location with BLM within 90 days after the date of location, and must file either a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of the calendar year after the claim was located and prior to Dec. 31 of each year thereafter. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the evidence submitted by an appellant preponderates, a decision declaring unpatented mining claims abandoned and void for failure to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be vacated.

Frank J. Tarantino, 77 IELA 328 (Dec. 5, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IELA 366 (Dec. 7, 1983)

RELOCATION

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Ferg, 71 IELA 131 (Mar. 9, 1983)

No amended location of a mining claim is possible if the original location was void.

Frank Melluzzo, 71 IELA 178 (Mar. 10, 1983)

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IELA 78 (May 17, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Fortage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

MINING CLAIMS--ContinuedRELOCATION--Continued

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IELA 174 (Nov. 17, 1983)

SURFACE USES

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

Acceptance by the Bureau of Land Management of mining claimant's verified statement under sec. 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1976), confirms only those rights to surface resources that the claimants held on July 23, 1955, as defined or limited by other existing law.

The Bureau of Land Management properly reserves to the United States in a mineral patent for O & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IBLA 81 (Dec. 16, 1983)

MINING CLAIMS--ContinuedTITLE

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IELA 366 (Dec. 7, 1983)

TUNNEL SITES

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void at initio will be reversed.

Intermountain Exploration Co., 76 IBLA 349 (Oct. 24, 1983)

WITHDRAWN LAND

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void at initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Griggs, 70 IBLA 228 (Jan. 24, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void at initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Perry, 71 IBLA 131 (Mar. 9, 1983)

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Robert J. King, L. K. Hollenback, 72 IBLA 75 (Apr. 12, 1983)

Hanson Properties, Inc., 74 IBLA 364 (July 28, 1983)

M. Joan Bryan, Michael Ralovich, 76 IBLA 192 (Oct. 6, 1983)

Mining claims located on land previously withdrawn from entry under the mining laws are properly declared null and void ab initio.

Where lands which have been withdrawn from entry and location under the general mining laws by a public land order, in determining the rights of a mining claimant who located claims subsequent to that withdrawal, it is immaterial that the land in question is covered by a prior withdrawal for a different purpose.

Joseph E. Vogler, Doris L. Vogler, Dorel Vogler, 72 IBLA 48 (Apr. 12, 1983)

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

A request by a mining claimant to drill on mining claims after the land has been withdrawn from mining is properly denied where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

C. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace E. Crocker, 73 IBLA 78 (May 17, 1983)

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Bogle, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

United States v. Eva M. Pcol et al., 74 IBLA 37 (June 27, 1983)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a pre-existing power project to be null and void ab initio.

The Bureau of Land Management properly declares null and void ab initio the portion of a placer mining claim located on land previously withdrawn and segregated from appropriation under the mining laws pursuant to the Act of Sept. 19, 1964 (78 Stat. 986; 43 U.S.C. §§ 1411-1418 (1976)).

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

New Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Intermountain Exploration Co., 76 IBLA 349 (Oct. 24, 1983)

Mining claims are properly declared to be void ab initio when it is shown that the master plat in the local Bureau of Land Management office shows that the lands located are within an area withdrawn from mineral entry.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lands segregated by Acts of Congress from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada are not available for location of mining claims where the Commission submitted a timely application for conveyance of the lands to the State in accordance with provisions of the Acts.

Malcolm L. Figert, Leonard Weiner, 77 IBLA 160 (Nov. 16, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Niece, 77 IBLA 205 (Nov. 22, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Shiny Rock Mining Corp. (On Reconsideration), 77 IELA 261 (Nov. 30, 1983)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

MINING CLAIMS RIGHTS RESTORATION ACT

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a pre-existing power project to be null and void ab initio.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power-sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IELA 81 (Dec. 16, 1983)

MINING OCCUPANCY ACT

PRINCIPAL PLACE OF RESIDENCE

BLM may properly reject an application to purchase land pursuant to sec. 1 of the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 (1976), where the applicant does not establish that the land was occupied as a principal place of residence by himself or his predecessor in interest for the 7 years prior to July 23, 1962.

Charles A. Mitchell, Sr., 77 IBLA 266 (Nov. 30, 1983)

MISTAKES

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Estate of John C. Erinton, 71 IBLA 160 (Mar. 10, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Irvin D. Bird, Jr., 73 IELA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IELA 261 (Nov. 30, 1983)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(See also Environmental Policy Act--if included in this Index.)

ENVIRONMENTAL STATEMENTS

A decision to implement a vegetative management program will be affirmed insofar as it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment. However, to the extent the record does not show that a salient aspect of the program has been assessed, and that aspect falls within the scope of the Board's jurisdiction, it may not be implemented until an adequate analysis of all relevant factors has been prepared.

SOCATS et al. (On Reconsideration), 72 IBLA 9 (Apr. 4, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

NATIONAL PARK SERVICE AREASGENERALLY

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

H. E. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IBLA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

NATIONAL PARK SERVICE AREAS--ContinuedGENERALLY--Continued

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3561.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggersen, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

NAVIGABLE WATERS

The exemption under sec. 404(r) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act--Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I),
(June 2, 1983) 90 I.D. 255

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

NOTICEGENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Enserch Excavation, Inc., 70 IBLA 25 (Jan. 6, 1983)

Erna Jellen, Suzanne K. Marcc, 70 IBLA 29 (Jan. 6, 1983)

Gerwin Flake Riding, 70 IBLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Eleanor A. Felser, 72 IBLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Rcass, Maria J. Rcass, 72 IBLA 395 (May 5, 1983)

Adote Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Continued --

NOTICE--Continued

GENERALLY--Continued

Barbara Payne, 73 IBLA 381 (June 15, 1983)
Jacqueline Balen, 73 IBLA 383 (June 15, 1983)
United Ventures, 74 IBLA 31 (June 24, 1983)
Page Investment Co., 74 IBLA 163 (July 12, 1983)
Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)
Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)
Josephine Slcper, 74 IBLA 234 (July 19, 1983)
Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)
Feick Associates, 76 IBLA 292 (Oct. 18, 1983)
Thomas M. Bloch, 76 IBLA 364 (Oct. 25, 1983)
Our Turn Now Ass'n, 77 IBLA 24 (Oct. 31, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

NOTICE--Continued

GENERALLY--Continued

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to ELM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Michele M. Lawursk, 71 IBLA 343 (Mar. 28, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to ELM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert K. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assured, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Harry K. Veal, 73 IBLA 86 (May 18, 1983)

William A. Stevensen, Alter Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnerships, 73 IBLA 305 (June 7, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the ELM notice for the required time, negligence by the Postal Service is not established; applicant was constructively served and thus had notice, and as he failed to pay the rental within the required 30 days,

NOTICE--ContinuedGENERALLY--Continued

BLM correctly rejected appellant's oil and gas lease application.

William F. Heins III, 74 IBLA 133 (June 30, 1983)

Estoppel will not lie against the Government where the record establishes that a party is properly chargeable with knowledge of the true facts, regardless of whether those facts were actually known by that party.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Where documents sent to a prospective oil and gas lease offeror are returned because the addressee has moved, and, on appeal from a rejection of his application for failure to submit an offer and tender the first year's rental, the applicant establishes that he had left a current forwarding address with the postal authorities, the provisions of 43 CFR 181C.2(b) relating to constructive receipt do not apply, and the rejection of the application will be reversed.

L. Lee Horschman, 74 IBLA 360 (July 28, 1983)

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

The Bureau of Land Management's transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Such delivery meets the requirements of the regulations governing communications by mail, 43 CFR 1810.2(b).

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

OFFICERS AND EMPLOYEES

(See also Federal Employees & Officers--if included in this Index.)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

OIL AND GAS LEASES

(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)

GENERALLY

Where the regulations require an oil and gas lease applicant who is receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program to file a copy of any agreement with such person or entity and the applicant fails to do so, the application properly is rejected.

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Read & Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

A Federal oil and gas lease conveys to the lessee the exclusive right to develop the leased deposits. In view of the exclusivity of this grant, no one may lawfully install equipment for such development on a Federal leasehold unless he holds such authority by or through the lessee.

Another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time period the lessee would have had to do so.

With regard to oil and gas leases, forfeitures are favored by the law, so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

Where an oil and gas lease limits the lessee's right to remove equipment placed on the lease to a certain period of time following the lease's termination, any equipment left on the leasehold after that period becomes the property of the lessor.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

The provisions of 43 CFR 3102.6-2, relating to filing of a signed statement or copy of a written agreement with persons who assist an applicant in a Federal oil and gas leasing program, are strictly construed. In the event an offeror fails to comply therewith, the offer is properly rejected.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

An oil and gas lease offer for less than 640 acres of land is properly rejected when the offer fails to include other adjoining lands which were available for leasing at the time the offer was filed, although included in a prior outstanding lease offer.

Edward E. Nicksic, 75 IBLA 4 (Aug. 2, 1983)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Minerals Management Service was the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary was entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

Amtra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a) (3) (1982).

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

ACQUIRED LANDS LEASES

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Katherine C. Thuez, 69 IBLA 391 (Jan. 4, 1983)

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James M. Chudnow, 70 IBLA 150 (Jan. 18, 1983)

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

OIL AND GAS LEASES--ContinuedACQUIRED LANDS LEASES--Continued

An acquired lands oil and gas lease offer is properly rejected when the metes and bounds description in the offer is stated as starting from corner 1 of tract S-18, when in actuality, the metes and bounds description originates from corner 2 of tract S-18. BLM is not required to alter, modify, or correct the metes and bounds description in an over-the-counter acquired lands oil and gas lease offer in order to resolve a disparity in the land description.

Thomas Connell, 70 IBLA 292 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Joseph C. Manga, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

Joe E. Shelton, 73 IBLA 250 (June 2, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

Sam P. Jones, 74 IBLA 242 (July 19, 1983)

OIL AND GAS LEASES--ContinuedACQUIRED LANDS LEASES--Continued

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

Worth D. Ware, Gayl L. Ware, 74 IBLA 256 (July 22, 1983)

It is proper to reject an oil and gas lease offer submitted for a tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points on the boundary of the tract.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

Husky Oil Co., 74 IBLA 264 (July 25, 1983)

An over-the-counter oil and gas lease offer which describes acquired land by tract acquisition number must be accompanied by a map showing the location of the requested lands or the offer will be rejected.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

An oil and gas lease offer for acquired lands is properly rejected where it contains an incomplete land description, specifically, the failure to specify the section as required by 43 CFR 3101.2-3(a).

William F. Fawcins, 76 IBLA 165 (Sept. 27, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Strick, 77 IBLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

Donald Ernest Willkens, 77 IBLA 144 (Nov. 15, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

A noncompetitive oil and gas lease offer for acquired lands may properly describe the requested land by acquisition tract number assigned by the acquiring agency, in accordance with 43 CFR 3101.2-3(b) (3), where the land has not been surveyed.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

ACREAGE LIMITATIONS

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes him to exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c) (3) (ii).

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

OIL AND GAS LEASES--Continued

APPLICATIONS

Generally

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Where a lease improperly issued to a senior offeror is canceled, the offer of the applicant having next priority is entitled to consideration.

Irvin Wall, 69 IELA 371 (Jan. 3, 1983)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

James H. W. Tseng, 69 IELA 387 (Jan. 4, 1983)

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IELA 18 (Jan. 6, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, must be rejected.

Marianne L. McManus, 70 IELA 21 (Jan. 6, 1983)

In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.

Enserch Exploration, Inc., 70 IELA 25 (Jan. 6, 1983)

American Petrofina Co. of Texas, 73 IELA 120 (May 23, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

Gigantosaurus Resources, Inc., 70 IBLA 52 (Jan. 10, 1983)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such lands are available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

Lowell J. Simons, 70 IBLA 128 (Jan. 14, 1983)

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Robert G. Lynn (On Reconsideration), 73 IELA 288 (June 7, 1983)

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes him to exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c) (3) (ii).

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes him to

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c) (3) (ii).

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits, or to lease oil and gas deposits owned by the United States in patented lands, upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing would be incompatible with the management of the Sun River Writter Elk Range for wildlife conservation purposes.

Chester L. Fringle, 70 IELA 254 (Jan. 25, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in either a wilderness study area or an instant study area action on such an offer must be suspended, to the extent that the lands are within a wilderness study area or instant study area, until congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in the applicable statutes or regulations prohibits the issuance of oil and gas leases for less than a full protracted section of Federal land.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IELA 294 (Jan. 27, 1983)

Where BLM rejects an oil and gas lease offer subject to compliance within 30 days, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IELA 343 (Feb. 2, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

Lands formerly included in a competitive oil and gas lease which expired at the end of its primary or extended term, and which were then classified as not within the boundaries of a known geologic structure, are subject to the filing of noncompetitive lease applications only in accordance with the simultaneous filing procedures in 43 CFR Subpart 3112. An over-the-counter offer for an oil and gas lease of such lands must be rejected.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

A first-drawn drawing entry card in a simultaneous filing held prior to May 23, 1980, was a noncompetitive offer to lease oil and gas and did not create a property right in the offeror. No rights to a lease survive the withdrawal of such offer.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the appellant must bear the responsibility for any error in the dating of the application.

Richard L. Kahn, 71 IBLA 120 (Mar. 7, 1983)

Richard W. Renwick, 76 IBLA 57 (Sept. 19, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

Action must be suspended on an oil and gas lease offer to the extent it includes lands in either a wilderness study area or an instant study area until Congressional action on the President's recommendations

OIL AND GAS LEASES--ContinuedAFFLICATICNS--ContinuedGenerally--Continued

as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)

90 I.D. 84

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area, action on such an offer must be suspended, to the extent that the lands are within a wilderness study area, until Congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 209 (Mar. 15, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period.

George W. Lewis, Jr., 71 IBLA 231 (Mar. 18, 1983)

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

Where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

43 CFR 3111.1-1(e) (4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Richard F. Carroll, 71 IBLA 307 (Mar. 22, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 349 (Mar. 28, 1983)

Where an order is published which restores certain withdrawn land to availability under the mineral leasing laws at a specific date and time in the future, a regular "over-the-counter" noncompetitive oil and gas lease offer which is delivered in advance to BLM with instructions that it be treated as filed effective as of the designated time and date must be considered a premature filing, and is properly rejected.

The Secretary of the Interior may, in his discretion, refuse to lease lands for oil and gas upon a proper determination that leasing would not be in the public interest.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

Where a lease agreement is mailed to a first-qualified applicant at his last address of record by certified mail, delivery to that address is adequate regardless of whether it was actually received by the applicant or not. A tender of lease agreement by the applicant more than 30 days subsequent to the date of delivery is properly rejected.

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michele M. Lawurak, 73 IBLA 36 (May 9, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a corporation and the signatory is an officer authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of incorporation and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hickory Creek Oil Co., 73 IBLA 173 (May 26, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Fradke, 73 IBLA 216 (May 27, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed and dated in the space provided on the card must be rejected.

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren W. Nissley, 73 IBLA 234 (May 31, 1983)

An oil and gas lease application, Form 3112-6 and 3112-6(a) (Automated Simultaneous Oil and Gas Lease Application, Parts A & B) is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions printed on the application where the applicant's name and address are not placed in the space provided therefor on Form 3112-6(a).

Nancy McMurtrie, 73 IBLA 247 (June 2, 1983)

Filing fees will be retained for simultaneous oil and gas lease applications which are rejected.

Shaw Resources, Inc., 73 IBLA 291 (June 7, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IBLA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Kutner, 73 IBLA 372 (June 15, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period.

Barbara Fayne, 73 IBLA 381 (June 15, 1983)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

D. M. Yates, 74 IBLA 18 (June 24, 1983)

An offer submitted by an agent for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

An offer by the first-drawn applicant of a simultaneous filing procedure drawing is not curable by submission of the required material after the period for such submission has expired, for the reason that the rights of the second- and third-drawn applicants have intervened.

United Ventures, 74 IBLA 31 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to applicant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's advance rental by more than 10 percent.

J. V. & Associates, 74 IBLA 45 (June 28, 1983)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LES Associates, Inc., 74 IBLA 192 (July 18, 1983)

A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end eo instante.

Where an applicant has withdrawn his first filed simultaneous oil and gas lease application because it contained a fatal flaw, and thereafter files a correct application, it is improper for the Bureau of Land Management to reject the second application as to parcels

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

for which it received first priority for the reasons that the applicant made multiple filings.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. P. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Leonard Minerals Co., 74 IBLA 371 (July 28, 1983)

Where a noncompetitive oil and gas lease offeror submits one official lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Charles T. Zimmerman, 75 IBLA 6 (Aug. 2, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Messinger, 75 IBLA 69 (Aug. 10, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area BLM may not issue a lease, and action on such an offer must be suspended until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Lawrence M. Wert, 75 IBLA 186 (Aug. 22, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

Where BLM rejects an oil and gas lease offer, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Filing fees of \$75 will be retained for simultaneous oil and gas lease applications which are rejected. The balance, if any, shall be refunded. 43 CFR 3112.3(b).

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a).

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Where the first-filed over-the-counter noncompetitive oil and gas lease offers each contain a curable defect listed in 43 CFR 3111.1-1(e), and where the offeror cures such defect, the offeror retains his priority as of the date the original offers were filed, even though a second qualified offeror filed an offer for some of the same lands included in the previously filed offers before the first offeror cured the defect in his offers.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

James L. Camblos III, 76 IBLA 174 (Sept. 30, 1983)

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 76 IBLA 186 (Oct. 3, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

It is not proper to reject an application in the simultaneous oil and gas leasing program because the address shown on the application coincidentally is the same as that of a filing service, where it is shown that the application was filed by members of the filing service for their own account.

Find Road Properties, 76 IBLA 330 (Oct. 20, 1983)

An executed lease agreement and first year's rental payment must be filed in the proper ELM office within 30 days of receipt of the notice. Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing.

Pioneer Farmcut #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

A filing fee of \$75 will be retained for each automated simultaneous oil and gas lease application form which is rejected. The balance of the filing fee amount submitted with each rejected form, if any, shall be refunded.

D. M. Olson, 76 IBLA 344 (Oct. 24, 1983)

In simultaneous oil and gas lease situations, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Thomas E. Elcch, 76 IBLA 364 (Oct. 25, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on ELM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George H. Keith (Partnership), 77 IELA 199 (Nov. 18, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Vernie Lysengen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Norserh, 78 IBLA 150 (Dec. 29, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

field has the burden of showing that the determination is in error.

R. C. Altrecce, 78 IELA 24 (Dec. 12, 1983)

A noncompetitive oil and gas lease offer is properly rejected pursuant to 43 CFR 3103.3-1 where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, 78 IELA 78 (Dec. 16, 1983)

Amendments

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michale M. Lawursk, 73 IELA 36 (May 9, 1983)

Attorneys-in-Fact or Agents

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IELA 18 (Jan. 6, 1983)

In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.

Enserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

American Petroleum Co. of Texas, 73 IBLA 120 (May 23, 1983)

Under 43 CFR 3102.2-1, a simultaneous oil and gas lease applicant may file for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 in any BLM office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant may properly reference the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

Anglo Resources, Inc., 70 IELA 106 (Jan. 12, 1983)

Even assuming, arguendo, that apparent omissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedAttorneys-in-Fact or Agents--Continued

interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Albert Whitehurst, 70 IBLA 168 (Jan. 19, 1983)

Where a simultaneous oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(b) (1981), the legal presumption of regularity which supports the official acts of Government officers will not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by BLM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

The regulation at 43 CFR 3102.2-6 (1981) requires that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent is a corporation, proof of the authority of the employee executing the application to act for the filing service is not required.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

A protest of an oil and gas lease offer executed by an attorney-in-fact is properly rejected where the copy of the agreement between the offeror and the attorney-in-fact authorizing the latter to act for the offeror has been filed as required by 43 CFR 3102.2-6 (1981) and referenced on the lease offer as permitted by 43 CFR 3102.2-1(c) (1981).

Leon F. Scully, Jr., 72 IBLA 96 (Apr. 13, 1983)

Leon F. Scully, Jr., 75 IBLA 377 (Aug. 31, 1983)

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles R. Tickel, 73 IBLA 360 (June 15, 1983)

90 I.D. 258

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedAttorneys-in-Fact or Agents--Continued

An offer submitted by an agent for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

United Ventures, 74 IBLA 31 (June 24, 1983)

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LES Associates, Inc., 74 IBLA 192 (July 18, 1983)

Under 43 CFR 3102.2-6(b) (1981), a copy of a uniform agreement was required to be filed with the simultaneous oil and gas lease application.

Robert T. F. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Under regulations in effect prior to Feb. 26, 1982, information concerning agency in cases where application for oil and gas leases was made by one other than the applicant was permitted to be placed on file with a single Bureau of Land Management Office which would then issue a serial number allowing incorporation by reference of the information on other applications made to other BLM state offices.

Bernard M. Holliday, 74 IBLA 288 (July 26, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin Williams & Judson, 74 IBLA 342 (July 28, 1983)

Departmental regulation 43 CFR 3102.2-6(b) (1981) required that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent was a corporation, it was not required to submit proof of the authority of the employee executing the application to act for the filing service.

Stanley L. Slater, 74 IBLA 357 (July 28, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedAttorneys-in-Fact or Agents--Continued

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship to the applicant, the regulation requires the application to be rejected.

Maurice W. Coburn, 75 IBLA 293 (Aug. 29, 1983)

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(b) (2), even though the offer, rental, and appropriate power of attorney materials were not received together by BLM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

Under provision of 43 CFR 3102.4 a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory to the application, and their relationship. Where the agent's relationship to the applicant is not revealed, the regulation requires the application to be rejected. The defective application may not be cured by amendment on appeal.

Pioneer Farmout #1 Ltd., 76 IBLA 250 (Oct. 17, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer where an attorney-in-fact signed the offer and submitted the first year's rental and the power of attorney did not prohibit the attorney-in-fact from filing offers on behalf of other participants, as required by 43 CFR 3112.4-1(b).

Kirk Rhone, 76 IBLA 332 (Oct. 20, 1983)

In simultaneous oil and gas lease situations, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Thomas M. Bloch, 76 IBLA 364 (Oct. 25, 1983)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) (1981) where the application is manually signed by the agent's employee identifying her position with the corporation and the name of the applicant. The employee is not also required to manually sign the applicant's name to conform to the terms of the agency agreement.

Departmental regulation 43 CFR 3102.2-6(b) (1981) required that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent was a corporation, it was not required to submit

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedAttorneys-in-Fact or Agents--Continued

proof of the authority of the employee executing the application to act for the filing service.

Eugene C. Colley, 78 IBLA 64 (Dec. 13, 1983)

Description

An offer for an acquired lands oil and gas lease covering lands which have not been surveyed under the rectangular system of public land surveys must be rejected where the offer does not describe the lands by metes and bounds, giving courses and distances and a tie to a public land survey corner. Where FLP must go outside of the offer form itself to determine exactly what land the offer embraced, the offer is defective and rejected as insufficient.

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.R. 3

Where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. An offer describing a protracted section by subdivisional parts is properly rejected where the section, containing 639 acres, is irregular.

Ida Lee Anderson, 70 IBLA 383 (Feb. 8, 1983)

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b) (2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Under 43 CFR 3101.1-4(d) (2), where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. However, a section containing 639 acres, whose available lands may be described by subdivisional parts, is not an irregular section within the meaning of the regulation.

Ida Lee Anderson (On Reconsideration), 73 IBLA 223 (May 31, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDescription--Continued

An over-the-counter oil and gas lease offer which describes acquired land by tract acquisition number must be accompanied by a map showing the location of the requested lands or the offer will be rejected.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald Epperson, 76 IBLA 4 (Sept. 6, 1983)

An oil and gas lease offer for acquired lands is properly rejected where it contains an incomplete land description, specifically, the failure to specify the section as required by 43 CFR 3101.2-3(a).

William B. Rawlins, 76 IBLA 165 (Sept. 27, 1983)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IELA 77 (Nov. 8, 1983)

A noncompetitive oil and gas lease offer for acquired lands may properly describe the requested land by acquisition tract number assigned by the acquiring agency, in accordance with 43 CFR 3101.2-3(b)(3), where the land has not been surveyed.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

Drawings

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Oxy Petroleum, Inc., 69 IBLA 357 (Jan. 3, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Derelys W. Delano, 69 IELA 360 (Jan. 3, 1983)

Failure to make timely payment of first year's rental for oil and gas lease is not excused where lease rental notice sent to applicant was returned marked "unclaimed" by Postal Service.

Ann C. Febrig, 69 IELA 376 (Jan. 4, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, must be rejected.

Marianne L. McManus, 70 IELA 21 (Jan. 6, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IELA 69 (Jan. 11, 1983)

Hampton E. Stewart, 72 IELA 358 (May 2, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Kenneth L. Hanlin, 70 IELA 115 (Jan. 13, 1983)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

John A. Flackhurst, 70 IELA 219 (Jan. 24, 1983)

Josephine Slifer, 74 IELA 234 (July 19, 1983)

Where, following a drawing of simultaneously filed oil and gas lease applications, a priority applicant fails to submit advance rental and the executed lease forms within 30 days after receipt of a notice that

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

payment was due, as prescribed by 43 CFR 3112.4-1, disqualification of the application is automatic.

Gerald E. Coleman, 70 IBLA 238 (Jan. 25, 1983)

Where a simultaneous oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(f) (1981), the legal presumption of regularity which supports the official acts of Government officers will not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by BLM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

A simultaneous oil and gas lease drawing is considered fair only if each applicant has had an equal chance of winning. Where the Bureau of Land Management by its own error creates circumstances whereby the reselection procedures of 43 CFR 3112.3-2 cannot be followed, an alternate reselection that preserves the rights of all applicants under the circumstances will be upheld.

Anne B. Ahrens, 70 IBLA 358 (Feb. 3, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Where an applicant, who is also an adult beneficiary of a trust, files an application to lease a particular parcel in a simultaneous oil and gas lease drawing, and her mother, who is trustee for applicant's trust, also files an application for the same parcel as an individual, 43 CFR 3112.2-1(f) (prohibition against holding, owning, or controlling any interest in more than one application for a particular parcel) and 3112.6-1 (prohibition against multiple filings) have not been violated and a BLM decision rejecting the daughter's application must be reversed.

Rachel S. Grynberg, 71 IBLA 83 (Feb. 24, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the appellant must bear the responsibility for any error in the dating of the application.

Richard L. Kahn, 71 IBLA 120 (Mar. 7, 1983)

Richard W. Renwick, 76 IBLA 57 (Sept. 19, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

Protests against issuance of oil and gas leases were properly dismissed where the protests were unsupported by facts to show the successful drawees should have been disqualified and where there was no competent evidence offered to indicate a violation of regulations as claimed.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Starecicher, 71 IBLA 203 (Mar. 14, 1983)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period.

George W. Lewis, Jr., 71 IBLA 231 (Mar. 18, 1983)

Failure to forward timely payment of first year's rental for oil and gas lease is not excused where the case record contains a signed postal return receipt card indicating that lease rental notice was received at appellant's address, even where the signature on the card was not that of the lease applicant.

Gerard C. Farrows, 71 IBLA 262 (Mar. 22, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Where applicant, who is beneficiary of a trust administered by his mother, files an application to lease in a simultaneous oil and gas lease drawing in which his mother files an application in her individual capacity Departmental regulations prohibiting multiple filings and holding owning or controlling interests in more than one application are not violated.

Stephen M. Grynberg, 72 IBLA 69 (Apr. 12, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

Where applicant, who is beneficiary of a trust administered by her mother, files an application to lease in a simultaneous oil and gas lease drawing in which her mother files an application in her individual capacity Departmental regulations prohibiting multiple filings and holding owning or controlling interests in more than one application are not violated.

Rachel S. Grynberg, 72 IBLA 72 (Apr. 12, 1983)

Failure to complete properly information required on a simultaneous oil and gas lease application renders the application defective and requires rejection of the application based upon the mandatory requirements in 43 CFR 3112.2-1. These requirements are strictly applied and, therefore, an affirmative answer to questions (d), (e), and (f) on the application dealing with the applicant's qualifications to hold a lease, even though resulting from inadvertent error, renders the application defective.

Frank L. Greene, 72 IBLA 215 (Apr. 25, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

Hepburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

A simultaneous application given priority which is defective because of noncompliance with a mandatory regulation, must be rejected and may not be cured by the submission of further information.

Virginia V. Devlin, 72 IBLA 361 (May 2, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a corporation and the signatory is an officer authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of incorporation and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hickory Creek Oil Co., 73 IBLA 173 (May 26, 1983)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Bradke, 73 IBLA 216 (May 27, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed and dated in the space provided on the card must be rejected.

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren W. Nissley, 73 IBLA 234 (May 31, 1983)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Shaw Resources, Inc., 73 IBLA 291 (June 7, 1983)

Rocky Mountain Exploration Co., 77 IBLA 15 (Oct. 31, 1983)

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Petersen, 73 IBLA 347 (June 10, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles R. Tickel, 73 IBLA 360 (June 15, 1983)
90 I.D. 258

Where an oil and gas lease applicant includes the name of the applicant and refers to a qualifications file which reveals the name of the signatory and the relationship between the signatory and the applicant, the applicant has complied with the requirements of 43 CFR 3112.2-1(b).

Liberty Petroleum Corp., 73 IBLA 368 (June 15, 1983)

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Kutner, 73 IBLA 372 (June 15, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer filed by a first-drawn applicant, pursuant to 43 CFR 3112.4-1, is acceptable where the offer form is signed by the applicant but includes the title of the individual as a "General Partner" of a particular partnership, designated on the application as a party in interest, since it is possible to determine that the signature matches the name of the offeror and the words referring to title should have been treated as surplusage.

Ann M. Davis et al., 74 IBLA 96 (June 30, 1983)

A simultaneous oil and gas lease application is properly signed, in terms of indicating the relationship of the signatory and the applicant, as required by 43 CFR 3112.2-1(b), where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file.

A simultaneous oil and gas lease application is properly filed by a partnership, in accordance with

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

43 CFR 3102.2-4 (1981), requiring the filing of statements of partnership qualifications, where the application is noted with a reference to the BLM serial number where the statements are on file, even though the application is dated prior to receipt by BLM, approval of, and assignment of a serial number for those statements.

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the qualifications file of the filing service listed on the application.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. E. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin Williams & Judson, 74 IBLA 342 (July 28, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Leonard Minerals Co., 74 IBLA 371 (July 28, 1983)

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

to the applicant, the regulation requires the application to be rejected.

Maurice W. Coburn, 75 IBLA 293 (Aug. 29, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a complete Social Security number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

Where one or more applications for an oil and gas lease are received for a parcel pursuant to the simultaneous oil and gas leasing procedures and no lease issues as a result of such filings, 43 CFR 3112.7 requires that the lands be subject to leasing only in accordance with Subpart 3112.

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

A decision dismissing the protest of the third-drawn oil and gas lease applicant against the prospective issuance of the lease to either the first- or second-drawn applicants will be affirmed where the statement of reasons for appeal merely repeats the wholly unsubstantiated allegations of the protestant that the others each had made agreements which invested third parties with undisclosed interests in their applications, in violation of regulations.

John W. Childress, 76 IBLA 42 (Sept. 14, 1983)

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lowey, 76 IBLA 195 (Oct. 6, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, these submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

Under provision of 43 CFR 3102.4 a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory to the application, and their relationship. Where the agent's relationship to the applicant is not revealed, the regulation requires the application to be rejected. The defective application may not be cured by amendment on appeal.

Pioneer Farmland #1 Ltd., 76 IBLA 250 (Oct. 17, 1983)

Petrolar Group (The), 77 IBLA 232 (Nov. 29, 1983)

Where an oil and gas lease applicant does not properly darken the circles on the automated simultaneous application form which correspond to her identification number and therefore the computer reads a different identification number on Part B from that on Part A, the application is not properly completed and must be rejected.

Eborah E. McCreief, 76 IBLA 287 (Oct. 18, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by FLP within 30 days from the receipt of notice.

James A. Scanafico, 76 IBLA 290 (Oct. 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no reference on the application to the signatory's relationship to the applicant, nor any reference to a qualifications file where the necessary information might be found, the requirements of the regulation have not been satisfied.

Feick Associates, 76 IBLA 292 (Oct. 18, 1983)

Cox-Turner New Ass'n, 77 IBLA 24 (Oct. 31, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

D. M. Olson, 76 IBLA 344 (Oct. 24, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Victor S. Duletsky, 77 IBLA 12 (Oct. 31, 1983)

Automated Simultaneous Oil and Gas Lease Application, Form 3112-6a (June 1981), commonly referred to as Part B, was designed to facilitate automated processing adopted in order to expedite the issuance of leases and lessen the paperwork of the public. If Form 3112-6a is completed in a manner which allows automated machine processing, is correct with respect to the information read by the computer, and is correct and complete with respect to that information not machine read, the application does not contain a fatal error because the arabic numerals corresponding to those numbered circles blackened by the applicant under the heading "Mark Social Security Number" are not placed in the boxes above the corresponding numbered circles. The required information is contained on the face of the application in readable form. No information is lacking, and no ambiguity has been created by the applicant.

Satellite Energy Corp., 77 IBLA 167 (Nov. 17, 1983)
90 I.D. 487

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George H. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Ecstas Service which delayed return of the lease agreement and rental payment.

Jay R. Angle, 77 IBLA 242 (Nov. 29, 1983)

Where an oil and gas lease applicant with first priority dies after application, but prior to lease issuance, the administratrix of his estate is entitled to the lease when she files a sufficient offer to lease.

Estate of James Philip Witmer, 77 IBLA 361 (Dec. 7, 1983)

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud and that the application was signed during the filing period, the misdating is a nonsubstantive error which does not require the rejection of the application.

Amberex Corp., 78 IBLA 152 (Dec. 29, 1983)

Filing

Where the regulations require an oil and gas lease applicant who is receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program to file a copy of any agreement with such person or entity and the applicant fails to do so, the application properly is rejected.

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IBLA 18 (Jan. 6, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Hampton F. Stewart, 72 IBLA 358 (May 2, 1983)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

transmitted, but that it was, in fact, actually received.

Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

Even assuming, arguendo, that apparent commissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

BLM may properly reject a simultaneous oil and gas lease application drawn with first priority where the applicant files the application and an attached statement setting forth the names of other parties in interest and the nature of the agreement between the parties, and the statement is not signed by the applicant, as required by 43 CFR 3102.2-7(b) (1981).

Richard S. Talbert, 70 IBLA 145 (Jan. 17, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Albert Whitehurst, 70 IBLA 168 (Jan. 19, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

John A. Plackhurst, 70 IBLA 219 (Jan. 24, 1983)

Josephine Slocfer, 74 IBLA 234 (July 19, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Fuel Exploration, Inc., 70 IBLA 361 (Feb. 3, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

Where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Richard F. Carroll, 71 IBLA 307 (Mar. 22, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b) (2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Where an order is published which restores certain withdrawn land to availability under the mineral leasing laws at a specific date and time in the future, a regular "over-the-counter" noncompetitive oil and gas lease offer which is delivered in advance to BLM with instructions that it be treated as filed effective as of the designated time and date must be considered a premature filing, and is properly rejected.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

Richard W. Kulis, 72 IBLA 251 (Apr. 27, 1983)

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michele M. Dawursk, 73 IBLA 36 (May 9, 1983)

An offeror for a noncompetitive oil and gas lease, filing over-the-counter, is not entitled to a refund of the filing fee even though she withdraws the offer prior to issuance of the lease.

Marie W. Sutc, 73 IBLA 61 (May 12, 1983)

BLM properly returned an automated simultaneous oil and gas lease application as part of a group of filings with a single remittance, under 43 CFR 3112.2-2(b), where two applications were filed and the various checks submitted therewith, were insufficient to cover all of the filing fees, and not clearly allocated between the applications so as to apply to a

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

separate grouping for which there would be sufficient fees.

William F. Ccllister, 73 IBLA 64 (May 12, 1983)

The provisions of 43 CFR 3102.6-2, relating to filing of a signed statement or copy of a written agreement with persons who assist an applicant in a Federal oil and gas leasing program, are strictly construed. In the event an offeror fails to comply therewith, the offer is properly rejected.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Where an applicant submits evidence which supports a conclusion that all five copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only four copies of the lease offer will be set aside.

Robert G. Lynn (On Reconsideration), 73 IBLA 286 (June 7, 1983)

Where an automated simultaneous oil and gas lease application Part E, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Filing fees will be retained for simultaneous oil and gas lease applications which are rejected.

Shaw Resources, Inc., 73 IBLA 291 (June 7, 1983)

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles R. Tickel, 73 IBLA 360 (June 15, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

Where an oil and gas lease applicant includes the name of the applicant and refers to a qualifications file which reveals the name of the signatory and the relationship between the signatory and the applicant, the applicant has complied with the requirements of 43 CFR 3112.2-1(b).

Liberty Petroleum Corp., 73 IBLA 368 (June 15, 1983)

A noncompetitive oil and gas lease offer filed by a first-drawn applicant, pursuant to 43 CFR 3112.4-1, is acceptable where the offer form is signed by the applicant but includes the title of the individual as a "General Partner" of a particular partnership, designated on the application as a party in interest, since it is possible to determine that the signature matches the name of the offeror and the words referring to title should have been treated as surplusage.

Ann M. Davis et al., 74 IBLA 96 (June 30, 1983)

A simultaneous oil and gas lease application is properly signed, in terms of indicating the relationship of the signatory and the applicant, as required by 43 CFR 3112.2-1(b), where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file.

A simultaneous oil and gas lease application is properly filed by a partnership, in accordance with 43 CFR 3102.2-4 (1981), requiring the filing of statements of partnership qualifications, where the application is noted with a reference to the BLM serial number where the statements are on file, even though the application is dated prior to receipt by BLM, approval of, and assignment of a serial number for those statements.

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where a noncompetitive oil and gas lease offeror submits one official lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

43 CFR 3111.1-1(e)(4), and ELM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Charles T. Zimmerman, 75 IBLA 6 (Aug. 2, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

BLM may properly reject a simultaneous oil and gas lease application filed by a partnership or a corporation where it is not accompanied by evidence of partnership qualifications, in the case of a partnership, in accordance with 43 CFR 3102.2-4 (1981), or by evidence of corporate qualifications, in the case of a corporation, in accordance with 43 CFR 3102.2-5 (1981), or by any reference to a serial number indicating where such information can be found, in accordance with 43 CFR 3102.2-1(c) (1981). Reference to a serial number on a document attached to the application will not suffice to comply with 43 CFR 3102.2-1(c) (1981).

Cretaceous Partnership, RBE, Inc., 75 IBLA 203 (Aug. 22, 1983)

Where an automated simultaneous oil and gas lease application Part F, form 3112-6a (June 1981), does not contain a complete Social Security number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Filing fees of \$75 will be retained for simultaneous oil and gas lease applications which are rejected. The balance, if any, shall be refunded. 43 CFR 3112.3(b).

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a).

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Where the first-filed over-the-counter noncompetitive oil and gas lease offers each contain a curable defect listed in 43 CFR 3111.1-1(e), and where the offeror cures such defect, the offeror retains his priority as of the date the original offers were filed, even though a second qualified offeror filed an offer for some of the same lands included in the previously filed offers before the first offeror cured the defect in his offers.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

James L. Camblos III, 76 IBLA 174 (Sept. 30, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

Where an oil and gas lease applicant does not properly darken the circles on the automated simultaneous application form which correspond to her identification number and therefore the computer reads a different identification number on Part B from that on Part A, the application is not properly completed and must be rejected.

Deborah E. Moncrief, 76 IBLA 287 (Oct. 18, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no reference on the application to the signatory's relationship to the applicant, nor any reference to a qualifications file where the necessary information might

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

be found, the requirements of the regulation have not been satisfied.

Reick Associates, 76 IBLA 292 (Oct. 18, 1983)

Our Turn Now Ass'n, 77 IBLA 24 (Oct. 31, 1983)

An executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days of receipt of the notice. Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing.

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Pioneer Farmcut #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

A filing fee of \$75 will be retained for each automated simultaneous oil and gas lease application form which is rejected. The balance of the filing fee amount submitted with each rejected form, if any, shall be refunded.

E. M. Olson, 76 IBLA 344 (Oct. 24, 1983)

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Donald E. Hock, 76 IBLA 367 (Oct. 25, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Victor S. Duletsky, 77 IBLA 12 (Oct. 31, 1983)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Rocky Mountain Exploration Co., 77 IBLA 15 (Oct. 31, 1983)

A first-drawn oil and gas lease application, Form 3112-6a, is properly rejected where there is no proper Form 3112-6 on file with the Bureau of Land Management at the time of the drawing.

T & T Development Co., 77 IBLA 54 (Nov. 7, 1983)

Automated Simultaneous Oil and Gas Lease Application, Form 3112-6a (June 1981), commonly referred to as Part B, was designed to facilitate automated processing adopted in order to expedite the issuance of leases and lessen the paperwork of the public. If Form 3112-6a is completed in a manner which allows automated machine processing, is correct with respect to the information read by the computer, and is correct and complete with respect to that information not machine read, the application does not contain a fatal error because the arabic numerals corresponding to those numbered circles blackened by the applicant under the heading "Mark Social Security Number" are not placed in the boxes above the corresponding numbered circles. The required information is contained on the face of the application in readable form. No information is lacking, and no ambiguity has been created by the applicant.

Satellite Energy Corp., 77 IBLA 167 (Nov. 17, 1983)
90 I.D. 487

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George H. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) (1981) where the application is manually signed by the agent's employee identifying her position with the corporation and the name of the applicant. The employee is not also required to manually sign the applicant's name to conform to the terms of the agency agreement.

Eugene C. Colley, 78 IBLA 64 (Dec. 13, 1983)

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud and that the application was signed during the filing period, the misdating is a nonsubstantive error which does not require the rejection of the application.

Amberex Corp., 78 IBLA 152 (Dec. 29, 1983)

Legibility

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Fradke, 73 IBLA 216 (May 27, 1983)

The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the qualifications file of the filing service listed on the application.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

IBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin Williams & Judson, 74 IBLA 342 (July 28, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedLegibility--Continued

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship to the applicant, the regulation requires the application to be rejected.

Maurice W. Coburn, 75 IBLA 293 (Aug. 29, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

Reinstatement

Where, on appeal, an oil and gas lease offeror alleges facts which, if shown, would entitle him to maintain his priority, a decision rejecting the offers will be set aside and remanded to the state office to afford the offeror an opportunity to show that the facts are as he has alleged.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

640-acre Limitation

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

An oil and gas lease offer for less than 640 acres of land is properly rejected when the offer fails to include other adjoining lands which were available for leasing at the time the offer was filed, although included in a prior outstanding lease offer.

Edward E. Nicksic, 75 IBLA 4 (Aug. 2, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--Continued640-acre Limitation--Continued

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald E. Peterson, 76 IBLA 4 (Sept. 6, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer for less than 640 acres where the land is not within an approved unit or cooperative plan of operation or surrounded by lands unavailable for leasing.

Jessie Neal Vaughan, 76 IBLA 146 (Sept. 26, 1983)

Sole Party in Interest

BLM may properly reject a simultaneous oil and gas lease application drawn with first priority where the applicant files the application and an attached statement setting forth the names of other parties in interest and the nature of the agreement between the parties, and the statement is not signed by the applicant, as required by 43 CFR 3102.2-7(b) (1981).

Richard S. Talbert, 70 IBLA 145 (Jan. 17, 1983)

An undisclosed interest was not created in a person referring a customer to an oil and gas leasing service where the referring person had only a hope or expectancy that some financial benefit might result from the referral. Where there was no enforceable right in the referring party to share in the proceeds of a lease obtained through the simultaneous oil and gas leasing drawing held by the Department, there was no violation of the provisions of the sole party in interest regulation, 43 CFR 3102.7.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

A simultaneous oil and gas lease application must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the applicant fails to submit a statement signed by herself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Virginia V. Devlin, 72 IBLA 361 (May 2, 1983)

An offeror is not disqualified where a written agreement creating other parties in interest in an oil and gas lease offer, filed in support of an offer pursuant to 43 CFR 3102.2-7 (1981), is signed by the offeror through an agent.

S.C.C. Oil Co., 73 IBLA 350 (June 14, 1983)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedSole Party in Interest--Continued

Statements required of other parties in interest in connection with a lease offer under 43 CFR 3102.2-7(b) (1981) must include a statement affirming the party's compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. With respect to an over-the-counter lease offer, where such a statement is not filed timely within 15 days of filing the lease offer as required by regulation, but is filed prior to final rejection of the lease offer, the offer may be reinstated only with priority as of the time the required information is filed.

An over-the-counter oil and gas lease offer which is executed by two offerors will not be rejected for failure to provide a copy of an agreement with other parties in interest under 43 CFR 3102.2-7(b) (1981) where both offerors have properly certified that they are the sole parties in interest.

Joe N. Johnson, J. Bass Mahoney, Resources Investment Corp., 74 IBLA 383 (July 29, 1983)

Where a partner in a firm engaged in the oil and gas business files an oil and gas lease offer in his own name, the partnership is entitled, in the absence of an agreement to the contrary, to participate in the benefits accruing from any issued lease and has an "interest" therein within the meaning of 43 CFR 3100.0-5(b) as a consequence of the partner's fiduciary duty to the firm. Such an interest is properly found where the partnership agreement contains a covenant not to compete.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

ASSIGNMENTS OR TRANSFERS

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo until presented with evidence that the parties have settled their dispute or with a copy of a court decree concerning the matter in controversy.

Fimple Enterprises, Inc. et al., 70 IPLA 180 (Jan. 20, 1983)

Where a partial assignment of an oil and gas lease was filed with the Bureau of Land Management several months before the anniversary date of the lease by a qualified entity, and where the rental for the assigned acreage was timely paid by the putative assignee, the assignment may be approved by BLM after termination of the base lease for nonpayment of the full lease rental on the anniversary date of the lease.

Ladd Petroleum Corp., 70 IBLA 313 (Jan. 28, 1983)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

OIL AND GAS LEASES--ContinuedASSIGNMENTS OR TRANSFERS--Continued

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

BLM may not act to approve or disapprove the assignment of an oil and gas lease where the assignor's legal guardian has revoked the power of attorney pursuant to which the assignment was executed and has requested BLM to disapprove the assignment, as any action would be contrary to established Departmental policy to maintain the status quo of the lease where there is evidence of a private dispute or controversy concerning the validity of the assignment.

Spectrum Oil & Gas Co., 73 IBLA 162 (May 24, 1983)

Pending approval of the assignment by BLM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

Harry C. Peterson, 75 IPLA 195 (Aug. 22, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1975 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

BCNA FIDE PURCHASER

Even assuming, *arguendo*, that apparent witnesses on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

D. M. Yates, 70 IPLA 134 (Jan. 14, 1983)

A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of a violation of Departmental regulation. The protection of a bona fide purchaser of an oil and gas lease applies only where consideration has been paid before notice of cancellation of the lease has been received by the lessor and has become part of BLM's records.

Bernard Kosik, 70 IPLA 373 (Feb. 4, 1983)

OIL AND GAS LEASES--ContinuedBONA FIDE PURCHASER--Continued

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

Where, at the time of an assignment of an oil and gas lease, BLM's records pertaining to the lease reveal that the lease had been improperly issued to the number one drawee in a simultaneous oil and gas lease drawing and also reveal that the second drawee had made inquiries as to why the lease had not been issued to her, the assignee of the lease is not a bona fide purchaser, for she is deemed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Where, at the time of an assignment of an oil and gas lease, the official BLM records reveal that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

A. W. Rutter, Jr., 74 IBLA 345 (July 28, 1983)

The bona fide purchaser of an oil and gas "lease" without notice of a defect in the assignor's title is protected by statute from cancellation of his interest in the lease. The purchaser of an interest in a "lease offer" cannot foreclose the Department from properly adjudicating the lease offer. Hence, the assignee is properly deemed to have notice of any potential defects disclosed in the case record during adjudication prior to lease issuance to the extent that an administrative decision on adjudication is not final but subject to appeal by a party adversely affected.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

Where a noncompetitive oil and gas lease was issued to a junior offeror who assigned his entire interest in the lease to others prior to issuance of a lease to the senior offeror for the same lands, the record is found not to be sufficient to sustain the lease issuance to the junior offeror and his assignees, whose statements appearing of record fail to establish them to be bona fide purchasers within the meaning of 43 CFR 3108.3(c). A hearing is ordered to permit the making of an adequate record upon which a determination of priority of interest may be made.

While the interests of a bona fide purchaser may be protected from cancellation by 30 U.S.C. § 184, the interest of an assignor who knows his title was defective is not protected. Overriding royalty interest reserved by assignor of lease acquired with knowledge of senior lease offer ordered canceled.

Frank M. Youngblood, 78 IBLA 162 (Dec. 30, 1983)

OIL AND GAS LEASES--ContinuedCANCELLATION

Where a noncompetitive oil and gas lease has erroneously been issued to a party other than the first-qualified applicant, cancellation is mandatory.

Bernard Kcsik, 70 IBLA 373 (Feb. 4, 1983)

Where, at the time of an assignment of an oil and gas lease, BLM's records pertaining to the lease reveal that the lease had been improperly issued to the number one drawee in a simultaneous oil and gas lease drawing and also reveal that the second drawee had made inquiries as to why the lease had not been issued to her, the assignee of the lease is not a bona fide purchaser, for she is deemed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of the lease terms.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Stanley Ustun, 71 IBLA 116 (Mar. 2, 1983)

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

Where an oil and gas lease offer when first filed is not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent of the required amount, and the lease is subsequently issued with a notice that the deficiency must be paid within 30 days under penalty of cancellation, the lease must be canceled pursuant to 43 CFR 3103.3-1 where the required deficiency payment is not submitted within the prescribed period. A 3-year delay by BLM in cancelling the lease does not prevent subsequent cancellation even where BLM never received the deficiency payment for the first year, yet continued to accept the correct annual rental payment for 2 succeeding lease years.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Emmons, 76 IBLA 262 (Oct. 17, 1983)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

A noncompetitive oil and gas lease must be canceled pursuant to 43 CFR 3103.3-1 where the offer was not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent, and the deficiency was not paid within 30 days from notice thereof.

Arden R. Grover, John R. Schumacher, 73 IBLA 308 (June 7, 1983)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the regulation, such signing is not authorized and, therefore, not binding on the Secretary.

D. M. Yates, 74 IBLA 159 (July 12, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

Where, at the time of an assignment of an oil and gas lease, the official BLM records reveal that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

A. W. Rutter, Jr., 74 IBLA 345 (July 28, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. M. Yates, 76 IBLA 208 (Oct. 11, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Mike Guffey, 78 IBLA 139 (Dec. 29, 1983)

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Samsco Resources Co., 71 IBLA 224 (Mar. 17, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Funk Exploration, 73 IBLA 111 (May 23, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease. Where on appeal such evidence is provided, the decision holding that the lease has expired will be reversed.

Husky Oil Co., 76 IBLA 380 (Oct. 25, 1983)

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to Federal oil and gas leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production of oil or gas in paying quantities on such Federal lease, the lease expires at the end of its primary term.

Unico Oil Co. of California, 77 IBLA 32 (Oct. 31, 1983)

COMPETITIVE LEASES

The Combined Hydrocarbon Leasing Act of 1981, E.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the

OIL AND GAS LEASES--ContinuedCOMPETITIVE LEASES--Continued

amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Read E. Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

A decision rejecting the high bid in a competitive oil and gas lease sale as inadequate is properly set aside and the case remanded for reconsideration of the bid where the record on appeal discloses that the Government's presale bid evaluation for the parcel in question was based on erroneous computations.

Stephen M. Bess, Alice Bess, 71 IBLA 122 (Mar. 7, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

Amoco Production Co. et al., 71 IBLA 241 (Mar. 21, 1983)

Exxon Corp., 73 IBLA 176 (May 26, 1983)

Ronald C. Agel, 73 IBLA 340 (June 10, 1983)

OIL AND GAS LEASES--ContinuedCOMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Petrovest, Inc., 71 IBLA 250 (Mar. 21, 1983)

TXO Production Corp., 73 IBLA 258 (June 7, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, non-competitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

Larry White, 72 IBLA 242 (Apr. 27, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Nortex Gas & Oil Co., 72 IBLA 379 (May 4, 1983)

Davis & Smith, Ltd., 73 IBLA 22 (May 9, 1983)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

Read & Stevens, Inc., 72 IBLA 390 (May 5, 1983)

Glen M. Hedge, 73 IBLA 377 (June 15, 1983)

Read & Stevens, Inc., 75 IBLA 349 (Aug. 31, 1983)

Viking Resources Corp., 77 IBLA 57 (Nov. 7, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service was the Secretary's technical expert in matters concerning geological

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary was entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration.

Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

Where a high bid for a competitive oil and gas lease is rejected as being too low, and where, on appeal, substantial questions of fact are raised concerning the methodology used by the Bureau of Land Management in determining the minimum acceptable value for a parcel of land offered at a competitive oil and gas lease sale, the matter may be referred for a hearing to allow appellant an opportunity to show that the valuation determination was incorrect.

Milton L. Morrison, 75 IBLA 107 (Aug. 11, 1983)

Harold Green, 75 IBLA 288 (Aug. 26, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Read & Stevens, Inc., 75 IBLA 121 (Aug. 15, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Billy Krumbein, 75 IBLA 216 (Aug. 23, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Bureau of Land Management acts as the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Suzanne Walsh, 75 IBLA 247 (Aug. 24, 1983)

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

B. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease in the National Petroleum Reserve--Alaska--because it is less than fair market value where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid for a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska--is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

ARCO Alaska, Inc., 78 IBLA 115 (Dec. 22, 1983)

CONSENT OF AGENCY

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Joseph C. Manna, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

Joe E. Shelton, 73 IBLA 250 (June 2, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

Department of the Interior is without authority to lease the lands noncompetitively.

Sam F. Jones, 74 IFLA 242 (July 19, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where ELM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Strccek, 77 IFLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

Donald Ernest Willkens, 77 IFLA 144 (Nov. 15, 1983)

DESCRIPTION OF LAND

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Katherine C. Thcuez, 69 IFLA 391 (Jan. 4, 1983)

An offer for an acquired lands oil and gas lease covering lands which have not been surveyed under the rectangular system of public land surveys must be rejected where the offer does not describe the lands by metes and bounds, giving courses and distances and a tie to a public land survey corner. Where ELM must go outside of the offer form itself to determine exactly what land the offer embraced, the offer is defective and rejected as insufficient.

James M. Chudnow et al., 70 IFLA 71 (Jan. 11, 1983)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.R. 3

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Nothing in the applicable statutes or regulations prohibits the issuance of oil and gas leases for less than a full protracted section of Federal land.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

An acquired lands oil and gas lease offer is properly rejected when the metes and bounds description in the offer is stated as starting from corner 1 of tract S-18, when in actuality, the metes and bounds description originates from corner 2 of tract S-18. BLM is not required to alter, modify, or correct the metes and bounds description in an over-the-counter acquired lands oil and gas lease offer in order to resolve a disparity in the land description.

Thomas Connell, 70 IBLA 292 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983)

It is proper to reject an oil and gas lease offer submitted for a tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points on the boundary of the tract.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

Husky Oil Co., 74 IBLA 264 (July 25, 1983)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IBLA 77 (Nov. 8, 1983)

DISCRETION TO LEASE

A determination pursuant to 43 CFR 3101.3-3(c) not to subject coordination lands to oil and gas leasing is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, an agreement has been reached that land within the Sun River Winter Elk Range, Montana, will not be subject to noncompetitive oil and gas leasing.

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits, or to lease oil and gas deposits owned by the United States in patented lands, upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing would be incompatible with the management of the Sun River Winter Elk Range for wildlife conservation purposes.

Chester L. Fringle, 70 IBLA 254 (Jan. 25, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land as a "primitive area," under 43 CFR Subpart 8352.

Where a state office has established various categories relating to the availability of land for leasing, including a category "Suspended or No Lease," it is error to reject an offer to lease lands included in such a category without providing an opportunity to accept the lands under a "no surface occupancy" stipulation and other such stipulations where such an opportunity is expressly provided for under the "Suspended or No Lease" category.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Where ELM rejects over-the-counter noncompetitive oil and gas lease offers in part and imposes no-surface-occupancy stipulations on almost all of the remaining lands, covering almost 19,000 acres, and where the record contains nothing explaining ELM's reasons for its decision and no evidence showing that its decision was valid as to the specific lands involved, BLM's decision will be set aside and the matter remanded for further consideration.

Fortune Oil Co., 70 IBLA 286 (Jan. 26, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Read E. Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

Larry White, 72 IBLA 242 (Apr. 27, 1983)

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

Read E. Stevens, Inc., 75 IBLA 121 (Aug. 15, 1983)

Suzanne Walsh, 75 IBLA 247 (Aug. 24, 1983)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

A decision rejecting the high bid in a competitive oil and gas lease sale as inadequate is properly set aside and the case remanded for reconsideration of the bid where the record on appeal discloses that the Government's presale bid evaluation for the parcel in question was based on erroneous computations.

Stephen M. Bess, Alice Bess, 71 IELA 122 (Mar. 7, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. M. Yates, 71 IELA 126 (Mar. 7, 1983)

D. M. Yates, 74 IELA 23 (June 24, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

Amoco Production Co. et al., 71 IELA 241 (Mar. 21, 1983)

Exxon Corp., 73 IELA 176 (May 26, 1983)

Ronald C. Agee, 73 IELA 340 (June 10, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and adjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Petrovest, Inc., 71 IELA 250 (Mar. 21, 1983)

Davis E. Smith, Ltd., 73 IELA 22 (May 9, 1983)

TAC Production Corp., 73 IBLA 258 (June 7, 1983)

The Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest. However, where a BLM state office has established various categories relating to the availability of land for leasing, and there is a question concerning the definition of the pertinent category and that question is not answered by

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

the case record, the decision will be set aside and remanded.

Rachalk Production, Inc., (On Reconsideration), 71 IBLA 360 (Mar. 28, 1983)

The Secretary of the Interior may, in his discretion, refuse to lease lands for oil and gas upon a proper determination that leasing would not be in the public interest.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

The Secretary of the Interior may, in his discretion, condition the issuance of an oil and gas lease upon the acceptance of special stipulations reasonably designed to protect environmental and other land use values. Where on appeal evidence suggests that a "no surface occupancy" stipulation has embraced more land than necessary to protect the identified resource values due to BLM's use of full legal subdivisions to describe the land to be so restricted, and that a topographical description might provide the same protection while limiting the restriction to a smaller area, the decision will be set aside and remanded for reconsideration.

Bill J. Maddox, 72 IBLA 22 (Apr. 4, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Nortex Gas & Oil Co., 72 IBLA 379 (May 4, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

Read & Stevens, Inc., 72 IBLA 390 (May 5, 1983)

Glen M. Hedge, 73 IBLA 377 (June 15, 1983)

Read & Stevens, Inc., 75 IBLA 349 (Aug. 31, 1983)

Viking Resources Corp., 77 IBLA 57 (Nov. 7, 1983)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The regulation, 43 CFR 3101.3-3(a) (1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. H. Yates, 74 IBLA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a) (1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. H. Yates, 74 IBLA 159 (July 12, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land which is being considered for designation as an "outstanding natural area," under 43 CFR 2071.1(b) (1), or an area of critical environmental concern, under sec. 103(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a) (1976).

Lawrence M. Kert, 75 IBLA 186 (Aug. 22, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Billy Krumbein, 75 IBLA 216 (Aug. 23, 1983)

Pursuant to provision of 43 CFR 3111.1-3(c), leasing of lands the surface of which is patented to the State of California with minerals reserved to the United States may be denied where the State objects to the lease for reasons determined by the authorized officer to be satisfactory.

Elacid Oil Co., 76 IBLA 37 (Sept. 14, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petrovest, Inc., 76 IBLA 327 (Oct. 19, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest.

David A. Provinse, 76 IBLA 340 (Oct. 20, 1983)

The Secretary has discretion to reject an offer to lease public lands for oil and gas exploration upon a determination supported by facts of record that leasing is not in the public interest because it is not consistent with the character of land classified as an outstanding natural area under 43 CFR Subpart 8352.

Where an offeror wishes to accept an oil and gas lease subject to a no surface occupancy stipulation, it is error to reject his offer to lease public lands where the record does not show consideration was given to whether issuance of such a lease was in the public interest.

Robert G. Lynn, 76 IBLA 383 (Oct. 27, 1983)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease in the National Petroleum Reserve--Alaska--because it is less than fair market value where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid for a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska--is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

ARCC Alaska, Inc., 78 IBLA 115 (Dec. 22, 1983)

DRILLING

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances.

Failure to secure another rig when the first rig is unable to reach potentially productive formations within 60 days after cessation of "actual drilling operations" does not constitute diligent drilling operations even where the lessee uses the first rig on neighboring leases under a prudent drilling program.

Christian F. Murer, 78 IBLA 172 (Dec. 30, 1983)

EXTENSIONS

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year or before the anniversary date of the lease.

Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

Harpel Drilling Co., 74 IBLA 228 (July 19, 1983)

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IBLA 292 (July 27, 1983)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease. Where on appeal such evidence is provided, the decision holding that the lease has expired will be reversed.

Musky Oil Co., 76 IBLA 380 (Oct. 25, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved cooperative or unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well. Where the lessee asserts that actual drilling operations were being diligently pursued for the lease in that a well was being tested and evaluated on the last day of the lease term, yet the record of daily activities for the well shows that it was shut in pending evaluation for 2 months prior to and 2 months following the expiration date, and the lessee provides no evidence to support its allegation, the decision holding the lease to have expired will be affirmed.

JWD III, Inc., 77 IBLA 164 (Nov. 17, 1983)

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances.

Failure to secure another rig when the first rig is unable to reach potentially productive formations within 60 days after cessation of "actual drilling operations" does not constitute diligent drilling operations even where the lessee uses the first rig on neighboring leases under a prudent drilling program.

Christian F. Murer, 78 IBLA 172 (Dec. 30, 1983)

FAVORABLE PETROLEUM GEOLOGICAL PROVINCES

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Cxy Petroleum, Inc., 69 IBLA 357 (Jan. 3, 1983)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Derelys W. Delanc, 69 IBLA 360 (Jan. 3, 1983)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offer fails to provide valid reasons why the senior offer should be considered defective.

Where a lease improperly issued to a senior offeror is canceled, the offer of the applicant having next priority is entitled to consideration.

Irvin Wall, 69 IBLA 371 (Jan. 3, 1983)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Pioneer Farmcut #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

Vernie Iysengen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Nirschl, 78 IBLA 150 (Dec. 29, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

OIL AND GAS LEASES--ContinuedFIRST-QUALIFIED APPLICANT--Continued

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Robert G. Lynn (On Reconsideration), 73 IBLA 288 (June 7, 1983)

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

Irvin Wall, 76 IBLA 186 (Oct. 3, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Fuel Exploration, Inc., 70 IBLA 361 (Feb. 3, 1983)

Where a noncompetitive oil and gas lease has erroneously been issued to a party other than the first-qualified applicant, cancellation is mandatory.

Bernard Kosik, 70 IBLA 373 (Feb. 4, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

OIL AND GAS LEASES--ContinuedFIRST-QUALIFIED APPLICANT--Continued

A first-drawn drawing entry card in a simultaneous filing held prior to May 23, 1980, was a noncompetitive offer to lease oil and gas and did not create a property right in the offeror. No rights to a lease survive the withdrawal of such offer.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 209 (Mar. 15, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 349 (Mar. 28, 1983)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Richard W. Kulis, 72 IBLA 251 (Apr. 27, 1983)

Where a lease agreement is mailed to a first-qualified applicant at his last address of record by certified mail, delivery to that address is adequate regardless of whether it was actually received by the applicant or not. A tender of lease agreement by the applicant more than 30 days subsequent to the date of delivery is properly rejected.

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren W. Nissley, 73 IBLA 234 (May 31, 1983)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. A defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

An offeror is not disqualified where a written agreement creating other parties in interest in an oil and gas lease offer, filed in support of an offer pursuant to 43 CFR 3102.2-7 (1981), is signed by the offeror through an agent.

S.O.C. Oil Co., 73 IBLA 350 (June 14, 1983)

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Kutner, 73 IBLA 372 (June 15, 1983)

An offer by the first-drawn applicant of a simultaneous filing procedure drawing is not curable by submission of the required material after the period for such submission has expired, for the reason that the rights of the second- and third-drawn applicants have intervened.

United Ventures, 74 IBLA 31 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to applicant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where an applicant has withdrawn his first filed simultaneous oil and gas lease application because it contained a fatal flaw, and thereafter files a correct application, it is improper for the Bureau of Land Management to reject the second application as to parcels for which it received first priority for the reasons that the applicant made multiple filings.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. F. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes

OIL AND GAS LEASES--ContinuedFIRST-QUALIFIED APPLICANT--Continued

final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or a reference by BLM serial number to a file in which such information has been filed, its offer receives no priority until the defect is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

A. W. Rutter, Jr., 74 IBLA 345 (July 28, 1983)

Statements required of other parties in interest in connection with a lease offer under 43 CFR 3102.2-7(b) (1981) must include a statement affirming the party's compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. With respect to an over-the-counter lease offer, where such a statement is not filed timely within 15 days of filing the lease offer as required by regulation, but is filed prior to final rejection of the lease offer, the offer may be reinstated only with priority as of the time the required information is filed.

An over-the-counter oil and gas lease offer which is executed by two offerors will not be rejected for failure to provide a copy of an agreement with other parties in interest under 43 CFR 3102.2-7(b) (1981) where both offerors have properly certified that they are the sole parties in interest.

Joe N. Johnson, J. Bass Mahoney, Resources Investment Corp., 74 IBLA 383 (July 29, 1983)

BLM may properly reject a simultaneous oil and gas lease application filed by a partnership or a corporation where it is not accompanied by evidence of partnership qualifications, in the case of a partnership, in accordance with 43 CFR 3102.2-4 (1981), or by evidence of corporate qualifications, in the case of a corporation, in accordance with 43 CFR 3102.2-5 (1981), or by any reference to a serial number indicating where such information can be found, in accordance with 43 CFR 3102.2-1(c) (1981). Reference to a serial number on a document attached to the application will not suffice to comply with 43 CFR 3102.2-1(c) (1981).

Cretaceous Partnership, RBE, Inc., 75 IBLA 203 (Aug. 22, 1983)

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(b) (2), even though the offer, rental, and appropriate power of attorney materials were not received together by BLM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

OIL AND GAS LEASES--ContinuedFIRST-QUALIFIED APPLICANT--Continued

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

It was improper to disqualify a first-drawn applicant in the simultaneous oil and gas leasing program because his agent's check in a previous drawing was returned as uncollectible, since under the applicable regulations the check in question should not have been deposited by the Bureau of Land Management.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

James C. Stevenson, 77 IBLA 150 (Nov. 15, 1983)

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Jay R. Angle, 77 IBLA 242 (Nov. 29, 1983)

FUTURE AND FRACTIONAL INTEREST LEASES

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

Worth D. Ware, Gayl L. Ware, 74 IBLA 256 (July 22, 1983)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Kenneth L. Hanlin, 70 IBLA 115 (Jan. 13, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983)

A noncompetitive oil and gas lease offer must be rejected where, at any time prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Peter Zamarello, 71 IBLA 39 (Feb. 16, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

A known geologic structure is technically the trap, whether structural or stratigraphic, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

Herburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

A determination by the Department concerning known geologic structure of an oil and gas field will not be disturbed in the absence of proof the determination is erroneous, nor will the rental be reduced without such proof.

TXC Production Corp., 73 IBLA 33 (May 9, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lcwey, 76 IBLA 195 (Oct. 6, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

R. C. Altrogge, 78 IBLA 24 (Dec. 12, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

An oil and gas lease offer is properly rejected where it describes lands declared to be held in trust for the Canoncito Band of Navajo Indians.

James M. Chudnow, 70 IBLA 139 (Jan. 14, 1983)

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

A determination pursuant to 43 CFR 3101.3-3(c) not to subject coordination lands to oil and gas leasing is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, an agreement has been reached that land within the Sun River Winter Elk Range, Montana, will not be subject to noncompetitive oil and gas leasing.

Chester L. Pringle, 70 IBLA 254 (Jan. 25, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

Lands formerly included in a competitive oil and gas lease which expired at the end of its primary or extended term, and which were then classified as not within the boundaries of a known geologic structure, are subject to the filing of noncompetitive lease applications only in accordance with the simultaneous filing procedures in 43 CFR Subpart 3112. An over-the-counter offer for an oil and gas lease of such lands must be rejected.

Sam F. Jones, 71 IBLA 42 (Feb. 17, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. M. Yates, 71 IBLA 126 (Mar. 7, 1983)

D. M. Yates, 74 IBLA 23 (June 24, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

F. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

CAF Co., 73 IBLA 203 (May 27, 1983)

A noncompetitive oil and gas lease offer is properly rejected where, as of the date the offer was filed, the land which is the subject of such offer has been withdrawn and has not yet officially been opened to applications under the mineral leasing laws pursuant to the terms of the public land order that revoked the prior withdrawal.

Robert W. Piatt, 73 IBLA 244 (June 2, 1983)

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Notestine, 73 IBLA 268 (June 7, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IELA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Tom Notestine, 73 IELA 320 (June 7, 1983)

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes noncompetitive leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

The Bureau of Land Management properly rejects a noncompetitive oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. M. Yates, 73 IBLA 353 (June 14, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the record is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. M. Yates, 74 IELA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. M. Yates, 74 IELA 159 (July 12, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Messinger, 75 IBLA 69 (Aug. 10, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

C. H. Nicholson, 75 IBLA 234 (Aug. 23, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Howell, 75 IBLA 328 (Aug. 30, 1983)

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald Epperson, 76 IBLA 4 (Sept. 6, 1983)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981).

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. M. Yates, 76 IBLA 208 (Oct. 11, 1983)

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petrovest, Inc., 76 IBLA 327 (Oct. 19, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest.

David A. Provinse, 76 IBLA 340 (Oct. 20, 1983)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

Amoco Production Co., 77 IBLA 27 (Oct. 31, 1983)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States and the offeror presents significant evidence showing that such interest in part may be owned by the United States, the case will be remanded for the submission of additional evidence and reexamination of whether the land in question is available for oil and gas leasing.

Douglas A. Fugh, 77 IBLA 126 (Nov. 15, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Mike Guffey, 78 IBLA 139 (Dec. 29, 1983)

NONCOMPETITIVE LEASES

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

Pioneer Farmout #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

Vernie Lysengen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Norsoph, 78 IBLA 150 (Dec. 29, 1983)

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth R. Lewis, 70 IBLA 112 (Jan. 13, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Kenneth L. Hanlin, 70 IBLA 115 (Jan. 13, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such lands are available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

Lowell J. Simons, 70 IBLA 128 (Jan. 14, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong ELM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the ELM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b) (2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

Hepburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Harry K. Veal, 73 IBLA 86 (May 18, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

William A. Stevenson, Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (June 7, 1983)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. A defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

Worth D. Ware, Gayl L. Ware, 74 IBLA 256 (July 22, 1983)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or a reference by BLM serial number to a file in which such information has been filed, its offer receives no priority until the defect is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

A. W. Rutter, Jr., 74 IBLA 345 (July 28, 1983)

Where one or more applications for an oil and gas lease are received for a parcel pursuant to the simultaneous oil and gas leasing procedures and no lease issues as a result of such filings, 43 CFR 3112.7 requires that the lands be subject to leasing only in accordance with Subpart 3112.

Phyllis H. Coddell, 75 IBLA 313 (Aug. 30, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lowey, 76 IBLA 195 (Oct. 6, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer where an attorney-in-fact signed the offer and submitted the first year's rental and the power of attorney did not prohibit the attorney-in-fact from filing offers on behalf of other participants, as required by 43 CFR 3112.4-1(b).

Kirk Rhone, 76 IBLA 332 (Oct. 20, 1983)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States and the offeror presents significant evidence showing that such interest in part may be owned by the United States, the case will be remanded for the submission of additional evidence and reexamination of whether the land in question is available for oil and gas leasing.

Douglas A. Pugh, 77 IBLA 126 (Nov. 15, 1983)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

James C. Stevenson, 77 IBLA 150 (Nov. 15, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding.

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

R. C. Altrogge, 78 IELA 24 (Dec. 12, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Nike Guffey, 78 IELA 139 (Dec. 29, 1983)

OPERATING AGREEMENTS

A Federal oil and gas lease conveys to the lessee the exclusive right to develop the leased deposits. In view of the exclusivity of this grant, no one may lawfully install equipment for such development on a Federal leasehold unless he holds such authority by or through the lessee.

Another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time period the lessee would have had to do so.

Where an oil and gas lease limits the lessee's right to remove equipment placed on the lease to a certain period of time following the lease's termination, any equipment left on the leasehold after that period becomes the property of the lessor.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co., et al., 71 IELA 53 (Feb. 22, 1983)

PATENTED OR ENTERED LANDS

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Nctestine, 73 IELA 268 (June 7, 1983)

The Bureau of Land Management properly rejects a noncompetitive oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

D. M. Yates, 73 IELA 353 (June 14, 1983)

OIL AND GAS LEASES--ContinuedREINSTATEMENT

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified where an employee of lessee did not understand the time constraints governing the time for payment.

Deck Oil Co., 70 IBLA 97 (Jan. 11, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the proper office for making payment, the use of an incorrect address is not justified. Mailing payment 3 days before it is due using an incorrect address does not reflect reasonable diligence in taking into account delays occasioned by the incorrect address.

Phillips Petroleum Co., 71 IBLA 105 (Feb. 25, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the address of the proper office for making payment, the use of an incorrect address is not justified. A lessee has not been reasonably diligent where it twice sends payment using the incorrect address even though mailed before the due date, when the correctly addressed payment is not mailed until after the due date.

Energetics, Inc., 71 IBLA 331 (Mar. 24, 1983)

The Department of the Interior is without authority under 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Pegasus Petroleum Corp., 71 IBLA 216 (Mar. 16, 1983)

Under 30 U.S.C. § 188(c) (1976), the Department of the Interior is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Samson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Breakdowns in a lessee's procedures for handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

Tenneco Oil Co., 71 IBLA 339 (Mar. 28, 1983)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Broda, 71 IBLA 390 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Withycombe, 72 IELA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment from Dallas, Texas, to Billings, Montana, 2 days before it is due does not constitute reasonable diligence.

For late payment of an oil and gas lease rental to be justifiable, factors beyond the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Delay in payment resulting from improperly addressing an envelope does not justify late payment within the meaning of 30 U.S.C. § 188(c) (1976).

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

Reasonable diligence in submitting an annual rental payment normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by ELM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

NE Energy Corp., 72 IELA 34 (Apr. 6, 1983)

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year or before the anniversary date of the lease.

Getty Oil Co., 72 IELA 39 (Apr. 6, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

To show that late payment was not due to a lack of reasonable diligence, a lessee must ordinarily show that payment was mailed sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental payment the day before it is due does not constitute reasonable diligence.

For late submission of an oil and gas lease rental payment to be justifiable within the meaning of 30 U.S.C. § 188(c) (1976), factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Inadvertence or lack of awareness that payment had to be received by the due date are not matters beyond the lessee's control and do not justify late payment.

John E. Conner, 72 IELA 83 (Apr. 13, 1983)

Where the lessee of an oil and gas lease terminated for nonpayment of annual rentals fails to show that the failure to timely pay the rentals was not due to a lack of reasonable diligence or that the failure to exercise reasonable diligence was justifiable, a petition to reinstate the lease under 30 U.S.C. § 188(c) (1976) is properly denied.

Goldie Skodras, 72 IELA 120 (Apr. 14, 1983)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon I. Berg, 72 IBLA 211 (Apr. 21, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

O. L. Foster, 72 IBLA 367 (May 3, 1983)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

the billing notice returned with the payment, the lease is properly held not to have terminated.

Nucorp Energy, Inc., 73 IBLA 101 (May 23, 1983)

Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. § 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

Pending approval of the assignment by ELM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

Harry C. Peterson, 75 IBLA 195 (Aug. 22, 1983)

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. § 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

Joanne F. Pechtel, 76 IBLA 1 (Sept. 6, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

Eleanor L. M. Dubey, 76 IBLA 177 (Sept. 30, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

R. K. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Eleanor V. Broda, 77 IBLA 63 (Nov. 7, 1983)

RELINQUISHMENTS

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand on oil and gas leases issued prior to Nov. 16, 1981. A lessee seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

OIL AND GAS LEASES--ContinuedRENEWALS

To obtain a renewal of a 20-year oil and gas lease, the lessee should file an application for renewal at least 90 days prior to the expiration of the lease. This requirement is permissive, however, and a delay in filing the application may be excused in the presence of special circumstances.

T & M Corp., Larry G. McLatchy, 70 IEIA 366 (Feb. 3, 1983)

RENTALS

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Derelys W. Delano, 69 IEIA 360 (Jan. 3, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

Gigantosaurus Resources, Inc., 70 IEIA 52 (Jan. 10, 1983)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Deck Oil Co., 70 IEIA 97 (Jan. 11, 1983)

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth E. Lewis, 70 IEIA 112 (Jan. 13, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong ELM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Welf, 70 IEIA 131 (Jan. 14, 1983)

Where, following a drawing of simultaneously filed oil and gas lease applications, a priority applicant fails to submit advance rental and the executed lease forms within 30 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1, disqualification of the application is automatic.

Gerald E. Coleman, 70 IEIA 238 (Jan. 25, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Samson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

R. K. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where, pursuant to 43 CFR 3112.4-1, ELM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to ELM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to ELM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Michele M. Jaworski, 71 IBLA 343 (Mar. 28, 1983)

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lease was deficient in the first year's rental, which deficiency was not timely cured, the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1734 (1976), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease or there are no other factors militating against repayment.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Ercda, 71 IBLA 390 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2). Timely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Withycombe, 72 IBLA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either

OIL AND GAS LEASES--ContinuedRENTALS--Continued

justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Loughorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Emmons, 76 IBLA 262 (Oct. 17, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert K. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

John E. Conner, 72 IBLA 83 (Apr. 13, 1983)

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rental on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon I. Berg, 72 IBLA 211 (Apr. 21, 1983)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

Richard W. Kulis, 72 IBLA 251 (Apr. 27, 1983)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

A determination by the Department concerning known geologic structure of an oil and gas field will not be disturbed in the absence of proof the determination is erroneous, nor will the rental be reduced without such proof.

TXO Production Corp., 73 IBLA 33 (May 9, 1983)

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Funk Exploration, 73 IBLA 111 (May 23, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be

OIL AND GAS LEASES--ContinuedRENTALS--Continued

set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

A noncompetitive oil and gas lease must be canceled pursuant to 43 CFR 3103.3-1 where the offer was not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent, and the deficiency was not paid within 30 days from notice thereof.

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden R. Grover, John R. Schumacher, 73 IELA 308 (June 7, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by ELM must be corroborated by other evidence to establish a tender of rental where there is no evidence of receipt of the payment in the file.

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

D. M. Yates, 74 IBLA 18 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's advance rental by more than 10 percent.

J. V. & Associates, 74 IBLA 45 (June 28, 1983)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

Where, pursuant to 43 CFR 3112.4-1, ELM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the BLM notice for the required time, negligence by the Postal Service is not established; appellant was constructively served and thus had notice, and as he failed to pay the rental within the required 30 days, BLM correctly rejected appellant's oil and gas lease application.

William F. Heins III, 74 IBLA 133 (June 30, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that documents were enclosed in the same envelope together with other documents that were received by ELM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the missing documents.

IBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where ELM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IELA 199 (Aug. 22, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(k)(2), even though the offer, rental, and appropriate power of attorney materials were not received together by ELM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

Eleanor L. M. Dubey, 76 IBLA 177 (Sept. 30, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IBLA 77 (Nov. 8, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the rental tendered with the lease offer is deficient by more than 10 percent.

James M. Chudnow, John L. Messinger, 77 IBLA 147 (Nov. 15, 1983)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Jay R. Angle, 77 IBLA 242 (Nov. 29, 1983)

Where an oil and gas lease applicant with first priority dies after application, but prior to lease issuance, the administratrix of his estate is entitled to the lease when she files a sufficient offer to lease.

Estate of James Philip Witmer, 77 IBLA 361 (Dec. 7, 1983)

A noncompetitive oil and gas lease offer is properly rejected pursuant to 43 CFR 3103.3-1 where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, 78 IBLA 78 (Dec. 16, 1983)

ROYALTIES

The United States, as lessor of an oil and gas lease, is entitled to its royalty based on "the reasonable value" of the gas as set by the Secretary. Where a party challenges a determination as to the value of gas produced, the party must establish that the methodology used in the Government's computation is, in fact, erroneous.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

STIPULATIONS

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 70 IBLA 225 (Jan. 24, 1983)

Where BLM rejects over-the-counter noncompetitive oil and gas lease offers in part and imposes no surface-occupancy stipulations on almost all of the remaining lands, covering almost 19,000 acres, and where the record contains nothing explaining BLM's reasons for its decision and no evidence showing that its decision was valid as to the specific lands involved, BLM's decision will be set aside and the matter remanded for further consideration.

Fortune Oil Co., 70 IBLA 286 (Jan. 26, 1983)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)

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A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

The Secretary of the Interior may, in his discretion, condition the issuance of an oil and gas lease upon the acceptance of special stipulations reasonably designed to protect environmental and other land use values. Where on appeal evidence suggests that a "no surface occupancy" stipulation has embraced more land than necessary to protect the identified resource values due to BLM's use of full legal subdivisions to describe the land to be so restricted, and that a topographical description might provide the same protection while limiting the restriction to a smaller area, the

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

decision will be set aside and remanded for reconsideration.

Bill J. Maddox, 72 IFLA 22 (Apr. 4, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Harry K. Veal, 73 IBLA 86 (May 18, 1983)

William A. Stevenson, Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IFLA 305 (June 7, 1983)

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Askins, 74 IFLA 12 (June 24, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Runkel, 75 IBLA 199 (Aug. 22, 1983)

The Bureau of Land Management may properly require an oil and gas lease offeror to execute no surface occupancy stipulations as a condition precedent to issuance of an oil and gas lease for land identified as critical habitat for bighorn sheep where the record explains why less stringent alternatives would not provide sufficient protection. However, where the record is inadequate to resolve issues raised by appellant and BLM files no response to the appeal, the case will be remanded to BLM to provide adequate support for its decision.

James M. Chudnow, 76 IBLA 167 (Sept. 28, 1983)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Board of Land Appeals will affirm a decision rejecting an oil and gas lease offer because of important geological features in the lands sought where the record supports the need to protect the resource and the offeror fails to indicate how leasing would be compatible with protection.

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 77 IBLA 73 (Nov. 8, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

SUSPENSIONS

No suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where MMS [now BLM] directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a).

Harpel Drilling Co., 74 IBLA 228 (July 19, 1983)

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

TERMINATION

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Deck Oil Co., 70 IBLA 97 (Jan. 11, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on

OIL AND GAS LEASES--Continued

TERMINATION--Continued

the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C. E. K. Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

With regard to oil and gas leases, forfeitures are favored by the law, so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

The Department of the Interior is without authority under 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Pegasus Petroleum Corp., 71 IBLA 216 (Mar. 16, 1983)

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hcoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Under 30 U.S.C. § 188(c) (1976), the Department of the Interior is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Samson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Breakdowns in a lessee's procedures for handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

Tenneco Oil Co., 71 IBLA 339 (Mar. 28, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Picda, 71 IBLA 390 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Withycombe, 72 IBLA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

Reasonable diligence in submitting an annual rental payment normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by EIM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

NP Energy Corp., 72 IBLA 34 (Apr. 6, 1983)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

The automatic termination of an oil and gas lease for failure to pay timely the annual rental is not subject to the general principle of law that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. Courts have held in connection with oil and gas leases that forfeitures are favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

John E. Conner, 72 IBLA 83 (Apr. 13, 1983)

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon L. Berg, 72 IBLA 211 (Apr. 21, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

C. L. Foster, 72 IBLA 367 (May 3, 1983)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

Muccre Energy, Inc., 73 IBLA 101 (May 23, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

No suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where MMS [now BLM] directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a).

Harrel Drilling Co., 74 IBLA 228 (July 19, 1983)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IBLA 292 (July 27, 1983)

Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. § 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

Harry C. Peterson, 75 IBLA 195 (Aug. 22, 1983)

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. § 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

Joanne F. Bechtel, 76 IBLA 1 (Sept. 6, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

Eleanor L. M. Dubey, 76 IBLA 177 (Sept. 30, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

R. K. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to Federal oil and gas leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production of oil or gas in paying quantities on such Federal lease, the lease expires at the end of its primary term.

Union Oil Co. of California, 77 IBLA 32 (Oct. 31, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Eleanor V. Fredda, 77 IBLA 63 (Nov. 7, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved cooperative or unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well. Where the lessee asserts that actual drilling operations were being diligently pursued for the lease in that a well was being tested and evaluated on the last day of the lease term, yet the record of daily activities for the well shows that it was shut in pending evaluation for 2 months prior to and 2 months following the expiration date, and the lessee provides no evidence to support its allegation, the decision holding the lease to have expired will be affirmed.

JWD III, Inc., 77 IBLA 164 (Nov. 17, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

TWENTY-YEAR LEASES

To obtain a renewal of a 20-year oil and gas lease, the lessee should file an application for renewal at least 90 days prior to the expiration of the lease. This requirement is permissive, however, and a delay in filing the application may be excused in the presence of special circumstances.

T & M Corp., Larry G. McLatchy, 70 IBLA 366 (Feb. 3, 1983)

UNIT AND COOPERATIVE AGREEMENTS

Where only a portion of an oil and gas lease is committed to an approved unit agreement, sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), mandates the segregation of the noncommitted lands into a separate lease.

Sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), contains no authority for the Department to segregate a unitized lease into separate leases upon its partial elimination from a unit plan by reason of contraction of the unit area.

Marathon Oil Co. et al., 78 IBLA 102 (Dec. 20, 1983)

WELL CAPABLE OF PRODUCTION

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IELA 354 (Feb. 3, 1983)

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hcoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IELA 237 (Mar. 18, 1983)

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IELA 292 (July 27, 1983)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED CCCS BAY GRANT LANDS

GENERALLY

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California Railroad (C&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires C&C lands to be managed for permanent forest production. No wilderness review is required where the C&C lands are being managed for commercial timber production.

Oregon Wilderness Coalition, 71 IELA 67 (Feb. 22, 1983)

MINING CLAIMS

The Bureau of Land Management properly reserves to the United States in a mineral patent for C & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Farnes et al., 78 IELA 46 (Dec. 13, 1983)

90 I.D. 550

TIMBER SALES

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

A party challenging a decision to harvest timber on the grounds that the lands involved will not

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS--Continued

TIMBER SALES--Continued

regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

Where the evidence establishes that BLM failed to conduct a cultural resource inventory in conformity with the applicable rules and regulations prior to offering timber for sale, BLM will be required to conduct a complete and proper cultural resource inventory before entry onto the land for harvesting is permitted.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

OUTER CONTINENTAL SHELF LANDS ACT

(See also Oil & Gas Leases--if included in this Index.)

OIL AND GAS LEASES

The United States, as lessor of an oil and gas lease, is entitled to its royalty based on "the reasonable value" of the gas as set by the Secretary. Where a party challenges a determination as to the value of gas produced, the party must establish that the methodology used in the Government's computation is, in fact, erroneous.

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their lapses, neglect of duty, failure to act, or delays in the performance of their duties.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

PATENTS OF PUBLIC LANDS

GENERALLY

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where applicant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where a corporation seeking a mineral patent files a certificate showing incorporation under the laws of a state, such corporation has established its citizenship within the meaning of the Mining Law of 1872, and a conclusive presumption thereby arises that all stockholders of the corporation are citizens of the United States, regardless of whether this is true or not.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

EFFECT

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior. Where BLM records show lands have been legally patented, an Indian allotment application for such lands is properly rejected.

Hank Patterson, 71 IBLA 109 (Feb. 28, 1983)

BLM may properly reject a mineral patent application to the extent it includes land embraced in a patent without a mineral reservation to the United States.

Nels Swanberg, Margaret Swanberg, 74 IBLA 249 (July 22, 1983)

The effect of the issuance of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land. Where the lands described in an oil and gas lease offer have been patented under a railroad grant BLM properly rejected the offer since it has no jurisdiction over the lands.

Amoco Production Co., 77 IBLA 27 (Oct. 31, 1983)

Mining claims located on land patented without a mineral reservation to the United States are properly declared null and void ab initio.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Language in a patent of railroad grant lands that excludes mineral lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

PAYMENTS

(See also Accounts--if included in this Index.)

GENERALLY

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

REFUNDS

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

PHOSPHATE LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

LEASES

Where a regulation authorizes BLM's request for certain information regarding a competitive phosphate lease application and a notice to the applicant states that failure to file such information within 60 days will subject the application to rejection, BLM may reject the application at the conclusion of the 60-day term in the absence of a filing extension.

GeoResources, Inc., 74 IBLA 236 (July 19, 1983)

PHOSPHATE LEASES AND PERMITS--Continued

LEASES--Continued

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

Where, on appeal, the fair market valuation of an area involved in a competitive phosphate lease offer is challenged in general terms, but no specific evidence of error is presented, and the record supports the evaluation, that evaluation will not be disturbed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

PERMITS

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Murer, 75 IBLA 232 (Aug. 23, 1983)

POTASSIUM LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

LEASES

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

Noranda Explorations, Inc., 71 IBLA 9 (Feb. 10, 1983)

POWERSITE LANDS

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a pre-existing power project to be null and void ab initio.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

PRACTICE BEFORE THE DEPARTMENT

(See also Rules of Practice--if included in this Index.)

PERSONS QUALIFIED TO PRACTICE

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Burney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

An appeal brought on behalf of another by a person who does not qualify under 43 CFR 1.3 to practice before the Department is subject to dismissal.

John H. Trigg, 74 IBLA 52 (June 28, 1983)

Welpet Energy, L. P., 75 IBLA 55 (Aug. 5, 1983)

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

An owner of a mining claim who purports to represent the interests of other co-owners may only properly represent the interests of other claim holders if such owner meets one of the qualifications set out in 43 CFR 1.3(b).

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under

PRACTICE BEFORE THE DEPARTMENT--ContinuedPERSONS QUALIFIED TO PRACTICE--Continued

43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hock, 76 IBLA 367 (Oct. 25, 1983)

PRESIDENT OF THE UNITED STATES

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

PUBLIC LANDS

(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

GENERALLY

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.R. 10

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

ADMINISTRATION

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.R. 10

PUBLIC LANDS--Continued

CLASSIFICATION

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duella M. Adams, Lyle R. Adams, 70 IBLA 63 (Jan. 10, 1983)

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IFLA 174 (Nov. 17, 1983)

LEASES AND PERMITS

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

SPECIAL USE PERMITS

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n, Inc., 70 IBLA 214 (Jan. 24, 1983)

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Score International, 78 IELA 142 (Dec. 29, 1983)

PUBLIC RECORDS

(See also Administrative Procedure, Confidential Information--if included in this Index.)

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IELA 264 (Jan. 26, 1983)
90 I.E. 10

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Harry S. Hills, 71 IELA 302 (Mar. 22, 1983)

Frederick W. Lowey, 76 IELA 195 (Oct. 6, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of FLM.

Regina Anne Jones, Claudie Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

RAILROAD GRANT LANDS

Where there is a deficiency of indemnity land to satisfy losses in place land, the right of a railroad vests to select indemnity under a grant in aid of construction. That right can be conveyed to an innocent purchaser for value and is not affected by a subsequent release filed pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

A railroad's right to select indemnity land under the Act of July 27, 1866, which had vested, was a claim

RAILROAD GRANT LANDS--Continued

which was required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present a claim within the time established by the Act barred acquisition of lands. A list of innocent purchasers for value filed with the Department in 1940 pursuant to sec. 321(b) of the Transportation Act, 49 U.S.C. § 65(b) (1976), did not constitute compliance with the 1955 recordation requirement.

Santa Fe Pacific Railroad Co., 72 IBLA 197 (Apr. 19, 1983)

Language in a patent of railroad grant lands that excludes mineral lands does not operate as a mineral reservation, or diminish the estate vested in the grantee upon discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.L. 550

RECREATION AND PUBLIC PURPOSES ACT

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

REGULATIONS

(See also Administrative Procedure--if included in this Index.)

GENERALLY

The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department.

Enserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

REGULATIONS--Continued

GENERALLY--Continued

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Erna Jellen, Suzanne K. Marco, 70 IFLA 29 (Jan. 6, 1983)

Gerwin Flake Riding, 70 IFLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IFLA 368 (Mar. 28, 1983)

Eleanor A. Felsner, 72 IFLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Adobe Oil & Gas Corp., 73 IFLA 263 (June 7, 1983)

Harold L. Long, 73 IFLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IFLA 311 (June 7, 1983)

Barbara Fayne, 73 IFLA 381 (June 15, 1983)

Jacqueline Falen, 73 IBLA 383 (June 15, 1983)

United Ventures, 74 IFLA 31 (June 24, 1983)

Page Investment Co., 74 IFLA 163 (July 12, 1983)

Shirley Fomerinke, 74 IFLA 210 (July 18, 1983)

Hughes Minerals, Inc., 74 IFLA 217 (July 18, 1983)

Josephine Slocer, 74 IFLA 234 (July 19, 1983)

Faul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Feick Associates, 76 IFLA 292 (Oct. 18, 1983)

Cur Turn Now Ass'n, 77 IFLA 24 (Oct. 31, 1983)

Where it benefits the affected party to do so, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form only where there are no intervening right which will be adversely affected.

Joseph L. Bush, Betty Bush, 71 IFLA 324 (Mar. 23, 1983)

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid or to declare an act of Congress unconstitutional.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IFLA 174 (Apr. 21, 1983)

90 I.L. 172

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IFLA 67 (May 16, 1983)

REGULATIONS--Continued

GENERALLY--Continued

The Board of Indian Appeals has no authority to declare duly promulgated Departmental regulations invalid.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

The Board of Indian Appeals does not have the authority to declare duly promulgated Departmental regulations invalid.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983) 90 I.D. 389

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

The provisions of 43 CFR 4170.1-3 are clearly punitive in nature. Punitive damages have for their purpose the punishment of the defendant in a civil action for wrongful and aggravated conduct and to serve as a warning to others to deter.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

APPLICABILITY

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

REGULATIONS--Continued

APPLICABILITY--Continued

Denver & Rio Grande Western Railroad Co., 71 IBIA 352 (Mar. 28, 1983)

A regulation is effective and binding only until amended or repealed.

Homer Swelser v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Penalties in civil cases should not be imposed except in cases that are clear and free from doubt. In application of penalties, all questions in doubt must be resolved in favor of the party from whom the penalty is sought.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

In the absence of specific rules governing reevaluation of an Indian school construction funding application, the Bureau of Indian Affairs will be held to the rules governing the initial evaluation of such an application, in order to avoid the appearance and reality of arbitrary, ad hoc decisionmaking.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

BINDING ON THE SECRETARY

Duly promulgated regulations have the force and effect of law and are binding upon the Department.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Procedures promulgated by the Department of the Interior specifically to provide uniformity in decisionmaking are "rules" within the meaning of 5 U.S.C. § 551(4) (1976) and are binding upon the Department, whether or not they are codified in the Code of Federal Regulations.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

REGULATIONS--Continued

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

Duly promulgated regulations have the force and effect of law and are binding upon the Department.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

A regulation is effective and binding only until amended or repealed.

Homer Smelser v. Bureau of Land Management, 75 IELA 44 (Aug. 5, 1983)

Duly promulgated Departmental regulations have the force and effect of law.

Estate of Ralph James (Elmer) Hail, 12 IBIA 62 (Nov. 10, 1983)

INTERPRETATION

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Katherine C. Thomez, 69 IELA 391 (Jan. 4, 1983)

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

REGULATIONS--Continued

INTERPRETATION--Continued

A regulation may not be strictly applied unless it is sufficiently clear so as to preclude any reasonable basis for an oil and gas lease applicant's noncompliance with it.

Elmer T. Stencipher, 71 IBLA 203 (Mar. 14, 1983)

Where it benefits the affected party to do so, a mining claim reclamation regulation which is amended while the matter is pending may be applied in its amended form only where there are no intervening rights which will be adversely affected.

Joseph L. Bush, Petty Bush, 71 IBLA 324 (Mar. 23, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBIA 357 (Mar. 28, 1983)

The Bureau of Indian Affairs will be presumed to have knowledge of decisions of the Board of Indian Appeals interpreting its regulations, and when regulations are revised without specific change in response to such a Board decision, the Bureau of Indian Affairs will further be presumed to have accepted that interpretation.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations) (Of Reconsideration), 11 IBIA 276 (Aug. 15, 1983)

90 I.D. 376

The provisions of 43 CFR 4170.1-3 are clearly punitive in nature. Punitive damages have for their purpose the punishment of the defendant in a civil action for wrongful and aggravated conduct and to serve as a warning to others to deter.

Penalties in civil cases should not be imposed except in cases that are clear and free from doubt. In application of penalties, all questions in doubt must be resolved in favor of the party from whom the penalty is sought.

Hughland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

PUBLICATION

The Bureau of Indian Affairs has promulgated regulations in 25 CFR Part 23 setting forth criteria for the allocation of limited grant funds under the Indian Child Welfare Act. These regulations, including the requirement that tribes be responsible for seeking funding for those tribal members living off the reservation but within areas designated "near reservation" by publication in the Federal Register, are reasonable attempts to conserve limited funds and ensure that duplication of benefits does not occur.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983)

90 I.D. 283

REGULATIONS--ContinuedPUBLICATION--Continued

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Procedures promulgated by the Department of the Interior specifically to provide uniformity in decisionmaking are "rules" within the meaning of 5 U.S.C. § 551(4) (1976) and are binding upon the Department, whether or not they are codified in the Code of Federal Regulations.

When an appellant personally received documents supplementing and amending a document previously published in the Federal Register, acknowledges that it knew the later documents would be used in deciding its case, and does not allege failure of publication, the Board of Indian Appeals will apply the procedures established in the later documents in deciding the appeal.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

Because the list of specific types of assistance provided by the Bureau of Indian Affairs under the general assistance program is not a rule within the meaning of 5 U.S.C. § 551(4) (1976), the general assistance eligibility criteria published in 25 CFR Part 20 may be used in determining eligibility for custodial care assistance, even though Part 20 does not specifically indicate custodial care as a type of assistance available through the general assistance program.

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 110 (Dec. 9, 1983) 90 I.D. 536

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 116 (Dec. 9, 1983)

Individuals may not be deprived of custodial care benefits provided by the Bureau of Indian Affairs solely on the basis of eligibility requirements set forth only in the Bureau of Indian Affairs Manual.

Henry W. Pegay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983) 90 I.D. 539

VALIDITY

The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department.

Enserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

REGULATIONS--ContinuedVALIDITY--Continued

The Board of Indian Appeals does not have authority to declare a duly promulgated regulation of the Department to be invalid.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

RENT

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

Rental rates for Government-furnished quarters located in one state may not be set by reference to an economically homogeneous area survey compiled with respect to an area of three states none of which is the state of the Government-furnished quarters for which the review of rental rate setting is being had; setting rates in such a prohibited manner is erroneous and any rates so set will be set aside.

In the Matter of Lewis A. Guthrie et al., 5 CFA 108 (Mar. 15, 1983)

Increase of quarters rental rates must, under Departmental rules, reflect reasonable value consistent with rates charged for similar private housing in the locality.

Randal L. Andrews, Elbert L. McGuire, & Virgil A. Ruckdashel, 5 CFA 113 (Mar. 21, 1983)

Jean Rodgers et al., 5 CFA 178 (Sept. 19, 1983)

CME Circular No. A-45 allows agencies to employ one of two alternative approaches to establish comparable rentals as a step in setting rental rates for Government-furnished quarters when the quarters are more than 5 miles away from an established community: either use the comparable rentals in a nearby representative community or conduct an economically homogeneous area survey; the Department, by regulation, has required the use of the latter of these alternatives when both are available. Thus, tenants' findings about rental rates in one particular community are irrelevant when the economically homogeneous area survey approach is used.

When an agency makes a downward adjustment to the basic rental rate for a lack of amenities in particular quarters as compared to the average number of amenities present in the comparable market, there is no surcharge to the basic rates for the amenities that are present.

The various authorities governing rental rate-setting clearly contemplate that some utility services to Government-furnished quarters will not be measured or metered; by providing that charges for such services in those circumstances will be established by reference to the average of such charges in the survey community, the authorities have insured that any resulting inequities to tenants will be kept to a minimum.

Although the Departmental handbook specifically requires ratesetting officials to deny the unusual

RENT--Continued

transportation costs (UTC) deduction for quarters located less than 30 miles from the nearest established community, when quarters are 29.4 miles away from such a community and the proportionate increase in rentals is as great as in this case, it is conceivable that it could be demonstrated that the new rental rate would be unreasonable if not adjusted for transportation costs; under the circumstances of this case, ratesetting officials should treat this appeal as a request to the appropriate Departmental official under 40 DM 5.2B (1), for a determination regarding application of the UTC deduction.

The regulations governing the rental ratesetting process suggest permitting the participation of tenants in certain parts of the process but accord tenants no right to participate; insofar as the regulations provide no relief for the failure to allow participation and as tenants here, neither allege nor prove any prejudice resulting from that failure, no relief may be granted.

The principle of comparability, which forms the basis for the ratesetting process, requires that the charge for an item of service be comparable to the charge for a comparable service in the comparison community. When the service is not provided or when some "service" is provided but it is so different from the comparison community service that it is inaccurate to term it comparable, then charging the rate for a comparison community service is inappropriate.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Where a floor plan of a Government rental unit discloses on its face only ordinary patterns, finding that the unit is possessed of the "unusual design features" amenity is inappropriate unless the involved agency can demonstrate the amenity's presence; in the absence of such a showing, a 2 percent decrease in the basic rental rate, is in order.

Appeal of Horace Traylor II et al., 5 OHA 117 (Mar. 22, 1983)

While meetings with employees are encouraged under the provisions of 41 CFR 114-52.601 to assure employee understanding of the process for establishing rental rates for Government-furnished quarters, such meetings are not mandated by these provisions.

Under limitations imposed by the Office of Management and Budget, the rental rate for Government-furnished quarters cannot be reduced to reflect unusual transportation costs by more than the maximum amount authorized by the Department's regulations at 41 CFR 114-52.302.

Under the provisions of 41 CFR 114-52.303, an adjustment to the basic rental rate of Government-furnished quarters is to be made to reflect the difference in the number of "amenities," as defined in 41 CFR 114-52.105(f), associated with the Government-furnished quarters as compared with the number of amenities associated with comparable private dwellings.

Under the provisions of 41 CFR 114-52.207, charges are to be added to the basic rental rate of Government-furnished quarters for furnishings provided by the Government.

To successfully challenge an element of a regional quarters survey used in calculating the basic rental

RENT--Continued

rate for Government-furnished quarters, the employee/occupant must assert more than unsupported conclusions of fact.

Appeal of the Henry Mountain Resource Area Employees, 5 CHA 127 (Mar. 31, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness.

When appropriate, the Government may credit an employee with 90 percent of the heating costs in excess of \$50 over the average seasonal heating costs in the area.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Appeal of Agnes Wales, 5 CHA 215 (Oct. 26, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness. Where the maximum authorized deduction has already been provided, no further transportation deduction is available.

Appeal of Fabela D. Doyle, 5 CHA 219 (Nov. 2, 1983)

RES JUDICATA

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Rose, Leo G. Cover, 73 IBLA 97 (May 23, 1983)

A settlement agreement is final and conclusive of all issues relating to the controversy.

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IELA 107 (Dec. 9, 1983)

RIGHTS-OF-WAY

(See also Indian Lands, Reclamation Lands--if included in this Index.)

GENERALLY

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald E. Clark, 70 IELA 39 (Jan. 10, 1983)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Black Hills Power & Light Co., 73 IBLA 199 (May 26, 1983)

Where, while a petition for reconsideration is pending before the Board of Land Appeals, BLM acknowledges petitioner's contention that there are conflicting and inconsistent practices within BLM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable method for arriving at the estimated fair market annual rental for BLM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to BLM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983)

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

ACT OF FEBRUARY 15, 1901

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Black Hills Power & Light Co., 73 IBLA 199 (May 26, 1983)

ACT OF FEBRUARY 1, 1905

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 561 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 561 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

ACT OF FEBRUARY 25, 1920

Where, while a petition for reconsideration is pending before the Board of Land Appeals, BLM acknowledges petitioner's contention that there are conflicting and inconsistent practices within BLM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920--Continued

method for arriving at the estimated fair market annual rental for BLM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to BLM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983)

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

P. & O. Falco, Inc., 78 IBLA 128 (Dec. 29, 1983)

APPLICATIONS

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

The Secretary has broad discretion regarding the amount of information he may require from the applicant for a right-of-way grant prior to accepting the application for consideration. The primary intended use of the right-of-way grant -- the use of the public lands -- must be disclosed. The applicant's inability to disclose a secondary use -- a use resulting from the primary use -- does not preclude the Secretary from considering the application. He must decide whether he is informed adequately of necessary facts to apply the relevant statutory criteria based upon the available information. If so, he may proceed to decide whether the grant or deny the interest that is sought based upon the statutory criteria for FLPMA.

Where an applicant for a right-of-way grant seeks to use the public lands as the site for a reservoir but is unable to disclose the ultimate use of approximately 82% of the water, the Secretary may decide to proceed to consider the application.

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-369C0 (Supp. I) (June 27, 1983) 90 I.D. 345

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

P. & O. Falco, Inc., 78 IBLA 128 (Dec. 29, 1983)

APPRAISALS

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

CANCELLATION

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

CONDITIONS AND LIMITATIONS

In plain and unambiguous regulations codified at 25 CFR Part 169, the Secretary of the Interior has required tribal consent for any right-of-way across tribal land, not just those sought under 25 U.S.C. §§ 323-328 (1976).

Article IX, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBLA 49 (Oct. 28, 1983) 90 I.D. 474

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

San Miguel Power Association, Inc., 71 IBLA 213 (Mar. 16, 1983)

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

The Secretary has broad discretion regarding the amount of information he may require from the applicant for a right-of-way grant prior to accepting the application for consideration. The primary intended use of the right-of-way grant -- the use of the public lands -- must be disclosed. The applicant's inability to disclose a secondary use -- a use resulting from the primary use -- does not preclude the Secretary from considering the application. He must decide whether he is informed adequately of necessary facts to apply the relevant statutory criteria based upon the available information. If so, he may proceed to decide whether the grant or deny the interest that is sought based upon the statutory criteria for FLPMA.

Where an applicant for a right-of-way grant seeks to use the public lands as the site for a reservoir but is unable to disclose the ultimate use of approximately 82% of the water, the Secretary may decide to proceed to consider the application.

When the Secretary receives a right-of-way application, he must make two decisions: a preliminary decision to determine whether the information submitted in the application is adequate for him to begin his evaluation and a final decision on whether to grant the right-of-way. As part of the final decision he must define the nature and character of the grant, including particulars concerning costs to be imposed, location, and terms and conditions. 43 U.S.C. §§ 1762, 1763, 1764, and 1765 (1976).

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 27, 1983) 90 I.L. 345

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

A decision exercising the discretion to terminate a right-of-way grant may be reversed where the record of the decision does not represent a reasoned analysis of pertinent factors with due regard for the public interest.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

NATURE OF DECISION

When the Secretary receives a right-of-way application, he must make two decisions: a preliminary decision to determine whether the information submitted in the application is adequate for him to begin his evaluation and a final decision on whether to grant the right-of-way. As part of the final decision he must define the nature and character of the grant, including particulars concerning costs to be imposed, location, and terms and conditions. 43 U.S.C. §§ 1762, 1763, 1764, and 1765 (1976).

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 27, 1983) 90 I.L. 345

RIGHTS-OF-WAY--Continued

OIL AND GAS PIPELINES

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

P. & O. Falco, Inc., 78 IBLA 128 (Dec. 29, 1983)

RULES OF PRACTICE

(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

Where ELM rejects an oil and gas lease offer subject to compliance within 30 days, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

BLM properly rejects a request for a time extension filed after termination of the 30-day compliance period where the rights of third parties are affected.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Where, on appeal, an oil and gas lease offeror alleges facts which, if shown, would entitle him to maintain his priority, a decision rejecting the offers will be set aside and remanded to the state office to afford the offeror an opportunity to show that the facts are as he has alleged.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

Where ELM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

Where, pursuant to 43 CFR 3112.4-1, ELM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being

RULES OF PRACTICE--Continued

GENERALLY--Continued

equivalent in legal effect to actual service of the notice.

Nichele F. Lawursk, 71 IBLA 343 (Mar. 28, 1983)

Where, pursuant to 43 CFR 3112.4-1, ELM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to ELM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert K. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

Where a stipulation as to the admissibility of various assay results is made by the Government and a mineral contestee, and the contestee clearly asserts his view as to the scope of the stipulation, it is the obligation of the attorney for the Government, if his interpretation differs, to clearly state his view so as to put the contestee on notice as to this conflict. Where this is not done, the stipulation will be enforced in accordance with the contestee's understanding.

United States v. J. Gary Feezer et al., 74 IBLA 56 (June 29, 1983) 90 I.D. 262

Where, pursuant to 43 CFR 3112.4-1, ELM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the BLM notice for the required time, negligence by the Postal Service is not established; appellant was constructively served and thus had notice, and as he failed to pay the rental within the required 30 days, BLM correctly rejected appellant's oil and gas lease application.

William F. Heins III, 74 IBLA 133 (June 30, 1983)

Where ELM rejects an oil and gas lease offer, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

The Bureau of Land Management's transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Such delivery meets the requirements of the regulations governing communications by mail, 43 CFR 1810.2(b).

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

RULES OF PRACTICE--Continued

GENERALLY--Continued

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

APPEALS

Generally

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)

90 I.L. 84

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

A party challenging a decision to harvest timber on the grounds that the lands involved will not regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983)

90 I.L. 189

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983)

90 I.L. 289

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

A coal lease clause which implements a statutory benefit is not ambiguous where the terms to be applied are expressed in a regulation which is cited in that clause. Where there is no allegation that the applicable process is erroneous or that a cognizable interest has been adversely affected, the proposed clause of the readjusted lease will be affirmed.

EMC Corp., 74 IBLA 389 (July 29, 1983)

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a FLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

Ronald E. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedBurden of Proof

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Nilson, 5 OHA 79 (Jan. 18, 1983)

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.L. 109

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pool et al., 74 IELA 37 (June 27, 1983)

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedBurden of Proof--Continued

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses became nothing more than reassertions of the disputed allegations of its claim and insufficient to sustain the burden of proof.

Appeal of Charley C. Estes, d.b.a. Phoenix Reforestation Co., IECA-1198-7-78 (Aug. 11, 1983) 90 I.L. 366

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IELA 209 (Aug. 22, 1983)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IELA 170 (Sept. 30, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IELA 366 (Dec. 7, 1983)

Dismissal

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry M. Fritchard, 70 IELA 154 (Jan. 18, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

An appeal to the Board of Land Appeals will be subject to dismissal in the exercise of the Board's discretion when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(E) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

An appeal to the Board will be dismissed where the issues on appeal are moot and where relief sought by appellant has been granted by a court.

Sierra Club, 71 IBLA 235 (Mar. 18, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Burney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ina May Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald F. Russell, Patricia K. Russell, 72 IBLA 28 (Apr. 5, 1983)

James M. Chudnow, Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983)

Gary T. Suhrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

An appeal before the Board of Indian Appeals will be dismissed at the request of the parties when it appears that the Board does not have authority to grant the relief sought.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IFIA 174 (Apr. 21, 1983)
90 I.C. 172

Appeals for which no statements of reasons are submitted will be dismissed in the exercise of the Board's discretion in the absence of any explanation for the failure to file or any indication of appellants' continuing intention to prosecute their appeals.

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

Phelps Dodge Corp. et al., 72 IFIA 226 (Apr. 26, 1983)

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983)
90 I.C. 228

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Lowell A. Casey, IBCA-1638-11-82 (May 23, 1983)
90 I.C. 230

An appeal before the Board of Indian Appeals will not be dismissed on the grounds that the Board lacks authority to grant the relief requested when the appeal seeks review of legal prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IFIA 249 (July 29, 1983)
90 I.C. 329

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Failure by appellant to point to some error in a decision or to show that agency action has deprived him of some right subjects his appeal to dismissal.

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

B. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wakon Redbird & Associates, IBCA-1682-6-83 (Sept. 30, 1983) 90 I.D. 441

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

Where, in its statement of reasons for appeal, appellant fails to allege a cognizable interest which has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Score International, 78 IBLA 142 (Dec. 29, 1983)

Effect of

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

Failure to Appeal

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Rose, Leo G. Comer, 73 IBLA 97 (May 23, 1983)

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elmer) Hail, 12 IBLA 62 (Nov. 10, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedHearings

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard R. Snyder, M. Marie Snyder, 70 IELA 207 (Jan. 24, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KernCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IELA 366 (Dec. 7, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

An evidentiary hearing is properly ordered pursuant to 43 CFR 4.415 where the record is inconclusive on an issue of material fact dispositive of the rights of the parties to an appeal.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

Motions

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim for interest was submitted to the contracting officer for a decision.

Appeal of Casework Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

A contractor's motion for reconsideration and to supplement the record by contractor's testimony after an adverse decision by the Board of the contractor's appeal, decided on the record without an oral hearing, is denied where the contractor failed to request a hearing, and its motion not only failed to satisfy the newly discovered evidence rule but also failed to disclose the testimony proffered.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Sept. 28, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedMotions--Continued

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the failure of a contractor to certify its claims in excess of \$50,000 when submitting them to the contracting officer, as required by sec. 6(c) of the Contract Disputes Act of 1978, is found to preclude the allowance of interest provided for by sec. 12 of the Act.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

The Board rejected appellant's contention that certification of a claim appended to a complaint makes Government counsel an agent of the contracting officer for the purpose of compliance with the requirements of 41 U.S.C. § 605(c)(1) and granted the motion of the Government to vacate the Board's decision rendered on the merits and to dismiss the appeal for lack of jurisdiction.

L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (Nov. 25, 1983) 90 I.D. 491

Notice of Appeal

Where ELM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IELA 343 (Feb. 2, 1983)

Where ELM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting ELM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IELA 153 (Mar. 9, 1983)

90 I.D. 84

Where ELM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of ELM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IELA 172 (Mar. 10, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedReconsideration

Where an appeal is dismissed for failure to timely file a statement of reasons in support thereof, and a petition for reconsideration is filed which essentially argues that the failure to timely file the statement of reasons with the Board was due to ignorance, such a petition for reconsideration has not shown extraordinary circumstances as required by 43 CFR 4.21(e) and is properly denied.

Where, during the adjudication of a petition for reconsideration of a dismissal of an appeal for failure to timely file a statement of reasons, a review of the case file discloses the existence of a document, filed after issuance of the adverse decision from which an appeal was taken, which delineates the points in controversy, such a document may be deemed a statement of reasons and the decision dismissing the appeal will be vacated.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

The Board will not consider an issue in a petition for reconsideration which was not timely raised and considered below.

Edmond H. Burns & Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IEIA 133 (Mar. 22, 1983)

A contractor's motion for reconsideration and to supplement the record by contractor's testimony after an adverse decision by the Board of the contractor's appeal, decided on the record without an oral hearing, is denied where the contractor failed to request a hearing, and its motion not only failed to satisfy the newly discovered evidence rule but also failed to disclose the testimony proffered.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Sept. 28, 1983)

Under 43 CFR 4.21(c), a request for reconsideration of a decision of the Board of Land Appeals must be filed promptly and may be granted only in extraordinary circumstances. A petition for reconsideration will be denied as untimely when it is filed more than 6 months after issuance of the decision, the petition raises no new matter, and the only apparent justification for such late filing is a reference to a recent court decision which has no controlling effect on the disposition of the appeal.

Pathfinder Mines Corp. (On Reconsideration), 76 IEIA 276 (Oct. 18, 1983)

Under 43 CFR 4.21(c), a request for reconsideration of a decision of the Board of Land Appeals must be filed promptly and may be granted only in extraordinary circumstances. A petition for reconsideration will be denied as untimely when it is filed more than 18 months after issuance of the decision, the petition raises no new issues or matters, and the only apparent justification for such late filing is a reference to a recent communication from the National Park Service which has no controlling effect on disposition of the appeal.

Tako Mining (On Reconsideration), 77 IEIA 30 (Oct. 31, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedReconsideration--Continued

Under 43 CFR 4.314 and 4.315, a decision issued by the Board of Indian Appeals is final for the Department without further action. The filing of a petition for reconsideration is not required for finality.

Walch Logging Co., Inc., Fant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 12 IEIA 126 (Dec. 22, 1983)

Service on Adverse Party

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

Jessie L. Winegeart v. Glenn W. Price, 74 IEIA 373 (July 29, 1983) 90 I.D. 338

Standing to Appeal

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

Where a protest is filed to a competitive phosphate lease offering, which protest is denied, and a timely appeal is filed by the protestant, the protestant is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

John D. Archer, 74 IEIA 323 (July 28, 1983)

Standing to appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management. An appeal may be dismissed without prejudice as premature where it is filed prior to an adverse adjudication of appellant's rights by BLM.

Cities of Colorado Springs & Aurora, 77 IEIA 395 (Dec. 9, 1983)

Where, in its statement of reasons for appeal, appellant fails to allege a cognizable interest which

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedStanding to Appeal--Continued

has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Statement of Reasons

An appeal to the Board of Land Appeals will be subject to dismissal in the exercise of the Board's discretion when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

Where an appeal is dismissed for failure to timely file a statement of reasons in support thereof, and a petition for reconsideration is filed which essentially argues that the failure to timely file the statement of reasons with the Board was due to ignorance, such a petition for reconsideration has not shown extraordinary circumstances as required by 43 CFR 4.21(e) and is properly denied.

Where, during the adjudication of a petition for reconsideration of a dismissal of an appeal for failure to timely file a statement of reasons, a review of the case file discloses the existence of a document, filed after issuance of the adverse decision from which an appeal was taken, which delineates the points in controversy, such a document may be deemed a statement of reasons and the decision dismissing the appeal will be vacated.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Failure by appellant to point to some error in a decision or to show that agency action has deprived him of some right subjects his appeal to dismissal.

B. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

A decision dismissing the protest of the third-drawn oil and gas lease applicant against the prospective issuance of the lease to either the first- or second-drawn applicants will be affirmed where the statement of reasons for appeal merely repeats the wholly unsubstantiated allegations of the protestant that the others each had made agreements which invested third parties with undisclosed interests in their applications, in violation of regulations.

John W. Childress, 76 IBLA 42 (Sept. 14, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedStatement of Reasons--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murby, Sr., 77 IBLA 130 (Nov. 15, 1983)

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Score International, 78 IBLA 142 (Dec. 29, 1983)

Timely Filing

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(B) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

An appellant's statement as to when the decision being appealed was received will be accepted in the absence of any proof in the record that the decision was received earlier.

Lillian Lord, a.k.a. Lillian George v. Comm'r of Indian Affairs, 11 IBLA 51 (Feb. 9, 1983)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ina May Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald F. Russell, Patricia K. Russell, 72 IBLA 28 (Apr. 5, 1983)

James M. Chudnow, Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983)

Gary T. Subrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedTimely Filing--Continued

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a final decision was dismissed with prejudice as untimely.

Appeal of B & B Contractors, IBCA 1646-1-83 (May 13, 1983) 90 I.D. 226

Regulation 43 CFR 4.401(a) authorizes a 10-day grace period for the filing of documents required under 43 CFR, Part 4, Subpart E, if the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Where the final day of the grace period is a Saturday and the following Monday is a Federal holiday, a document filed on Tuesday, if timely transmitted to the proper office, meets the requirements of the regulation.

Ida Mae Rose, Leo G. Comer, 73 IBLA 97 (May 23, 1983)

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a contracting officer's final decision is dismissed as untimely.

Appeal of Tibbals Construction, Inc., IBCA-1618-9-82 (Nov. 4, 1983)

Timely filing of an appeal under the Contract Disputes Act of 1978 is jurisdictional and an appeal filed after the expiration of the 90-day period allowed by the Act is dismissed since the Board has no jurisdiction to consider an untimely filed appeal.

Appeal of Denver Pump Co., Inc., IBCA-1725-9-83 (Nov. 14, 1983)

Appeal of Nicholson Construction Co., IBCA-1711-8-83 (Nov. 30, 1983) 90 I.D. 494

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

Score International, 78 IBLA 142 (Dec. 29, 1983)

EVIDENCE

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling

RULES OF PRACTICE--ContinuedEVIDENCE--Continued

objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbc, 70 IBLA 244 (Jan. 25, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee B. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses became nothing more than reassertions of the disputed allegations of its claim and insufficient to sustain the burden of proof.

Appeal of Charley O. Estes, d.b.a. Phoenix Refinestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

RULES OF PRACTICE--Continued

EVIDENCE--Continued

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

GOVERNMENT CONTESTS

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Fula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

HEARINGS

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a PLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KernCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

RULES OF PRACTICE--Continued

HEARINGS--Continued

evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Where a notice of intent to hold a hearing pursuant to 30 U.S.C. § 621(b) and 43 CFR 3736.1(b), when transmitted and received by the locators of the claims at issue, correctly identifies all locators of record as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to participate in the hearing will not vitiate that hearing.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

RULES OF PRACTICE--Continued

HEARINGS--Continued

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

United States v. Norman Montgomery et al., 75 IBLA 356 (Aug. 31, 1983)

Where an appellant establishes that an appraisal of the value of sand and gravel removed from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), did not consider the rights to compensation of the surface owner in its determination of trespass damages, the case may be referred to the Hearings Division for a fact-finding hearing.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Aleknagik, Ray M. Clser, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

PRIVATE CONTESTS

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCC Services, 73 IBLA 374 (June 15, 1983)

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the ELM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Jessie L. Winegeart v. Glenn W. Price, 74 IBLA 373 (July 29, 1983) 90 I.D. 338

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

PROTESTS

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful dravce should be disqualified.

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

Under the Department's Rules of Practice, 43 CFR 4.450-2, a protest is any objection to an action proposed to be taken. A protest may not be used in a case where no appeal against a Bureau of Land Management decision was taken during the period allowed for such appeal.

Horizon Exploration Co., 72 IBLA 43 (Apr. 7, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

Where a protest is filed to a competitive phosphate lease offering, which protest is denied, and a timely appeal is filed by the protestant, the protestant is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

RULES OF PRACTICE--Continued

PROTESTS--Continued

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that ELM's decision was in error.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

SUPERVISORY AUTHORITY OF THE SECRETARY

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Public of Laguna v. Assistant Secretary for Indian Affairs, 12 IBLA 80 (Dec. 7, 1983) 90 I.D. 521

SECRETARY OF THE INTERIOR

(See also Administrative Authority--if included in this Index.)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys, and making resurveys to reestablish corners and lines of earlier official surveys.

Mr. & Mrs. John Koppans, 70 IBLA 75 (Jan. 11, 1983)

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to

SECRETARY OF THE INTERIOR--Continued

accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.C. 10

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States, including lands in national parks, after adequate notice and opportunity for a hearing.

United States v. William Lavon Chappell et al.,
72 IBLA 88 (Apr. 13, 1983)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218
(Apr. 25, 1983)

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

SECRETARY OF THE INTERIOR--Continued

In reviewing a decision of the Assistant Secretary for Indian Affairs referred to the Board of Indian Appeals by the Secretary of the Interior under 43 CFR 4.22C(a)(2), the Board has the full authority of the Secretary to review questions both of law and of discretion.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.C. 521

SEGREGATION

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 1C of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Henrietta Roberts Vaden, 70 IBLA 171 (Jan. 20, 1983)

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official ELM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

C. Glenn Cliver, 73 IBLA 56 (May 12, 1983)

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1956, F.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of ELM.

Regina Anne Jones, Claudie Lee Jones, 76 IBIA 17
(Sept. 6, 1983)

SEGREGATION--Continued

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IELA 174 (Nov. 17, 1983)

SMALL TRACT ACT

GENERALLY

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

Betha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Gilson, 76 IBLA 20 (Sept. 6, 1983)

Where BLM makes an unequivocal offer to sell a small tract and invites acceptance by submitting a prescribed amount as full payment, and where an individual submits the payment, a binding contract passing equitable title to the buyer is created. Thereafter, BLM holds legal title in trust for the purchaser and, as soon as any impediments to conveyance of full legal title are removed, it is obliged to convey title to him, without additional charge.

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal

SMALL TRACT ACT--Continued

GENERALLY--Continued

will not be disturbed in the absence of positive, substantial evidence that it is in error.

John Dillingham et al., 73 IELA 156 (May 24, 1983)

APPLICATIONS

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Gilson, 76 IBLA 20 (Sept. 6, 1983)

APPRAISALS

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Betha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

CLASSIFICATION

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

SODIUM LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

LEASES

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is

SODIUM LEASES AND PERMITS--ContinuedLEASES--Continued

entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

PERMITS

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

SPECIAL USE PERMITS

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

SPECIAL USE PERMITS--Continued

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Score International, 78 IBLA 142 (Dec. 29, 1983)

STATE COURTS

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Werny Pekah, 11 IBLA 237 (July 6, 1983)

STATE EXCHANGES

(See also Exchanges of Land--if included in this Index.)

GENERALLY

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Tcm Notestine, 73 IBLA 320 (June 7, 1983)

STATE GRANTS

Land which has been granted and approved to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio.

While the Secretary of the Interior may recommend appropriate judicial action to cancel a conveyance and regain title if the circumstances warrant, a stranger to any prior claim or interest has no standing to seek cancellation of a state grant.

George Antonovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.L. 464

STATE LAWS

A corporate applicant for geothermal leases does not lose its priority as senior offeror because it has been temporarily suspended by its state of incorporation for failure to pay taxes, where the state has a policy that a suspended corporation may regain full

STATE LAWS--Continued

status, without penalty, upon payment of its obligations.

California Energy Co., Inc., 70 IBLA 221 (Jan. 24, 1983)

When the Board of Indian Appeals finds that the decision in an appeal requires further extensive analysis of Federal and state law, the case will be remanded or referred to an Administrative Law Judge familiar with the legal issues.

Estate of James Wemy Pekah, 11 IBIA 237 (July 6, 1983)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

The status and rights of a dissolved corporation are to be determined with reference to the law of the state of incorporation.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983) 90 I.D. 329

STATE SELECTIONS

(See also School Lands, Swamplands--if included in this Index.)

The final approval of a list of state selected lands ended the Department's authority to resolve conflicting claims to those lands, including its authority to recognize the validity of mining claims situated thereon.

George Antunovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Erna Jellen, Suzanne K. Marco, 70 IBLA 29 (Jan. 6, 1983)

Gerwin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IBIA 368 (Mar. 28, 1983)

Eleanor A. Pelser, 72 IBLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Barbara Payne, 73 IBLA 381 (June 15, 1983)

STATUTES--Continued

Jacqueline Ealen, 73 IELA 383 (June 15, 1983)

Page Investment Co., 74 IEIA 163 (July 12, 1983)

Shirley Pomerinke, 74 IEIA 210 (July 18, 1983)

Hughes Minerals, Inc., 74 IEIA 217 (July 18, 1983)

Josephine Slocfer, 74 IEIA 234 (July 19, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IEIA 76 (Aug. 10, 1983)

The Board of Indian Appeals will remand a case to the Bureau of Indian Affairs under 43 CFR 4.337(b) when legislation is passed during the pendency of an appeal that potentially gives the EIA discretionary authority to take action relative to the basis for the appeal.

Dora Joyce Prieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IEIA 124 (Mar. 22, 1983)

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Barnes et al., 78 IEIA 46 (Dec. 13, 1983) 90 I.D. 550

STATUTORY CONSTRUCTION

GENERALLY

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

The fundamental principle of statutory construction that words are to be taken in their ordinary meaning unless they are technical terms or words of art is particularly applicable in the construction of statutes concerning Indians.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Pelsheimer v. Assistant Secretary for Indian Affairs, 11 IEIA 155 (Apr. 14, 1983) 90 I.D. 165

STATUTORY CONSTRUCTION--ContinuedINDIANS

Ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBLA 49 (Oct. 28, 1983) 90 I.D. 474

LEGISLATIVE HISTORY

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

B. K. Herndon, 76 IBLA 353 (Oct. 24, 1983)

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

C. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

STOCK-RAISING HOMESTEADS

(See also Homesteads (Ordinary)--if included in this Index.)

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977ADMINISTRATIVE PROCEDUREBurden of Proof

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes un rebutted, the violation must be sustained.

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--ContinuedADMINISTRATIVE PROCEDURE--ContinuedBurden of Proof--Continued

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Where an applicant for review fails to establish by a preponderance of evidence that a violation did not occur, a notice of violation will be sustained.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

Findings

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

APPEALSGenerally

Except for decisions on citizens' complaints, to which a different rule applies, an OSM State Director's decision is appealable to the Board under 43 CFR 4.1281 only if the decision states the right of appeal.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983) 90 I.D. 496

APPLICABILITYGenerally

A road used in surface coal mining and reclamation operations is subject to regulation by CSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983) 90 I.D. 1

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

APPROXIMATE ORIGINAL CONTOURGenerally

The complete elimination of highwalls is an absolute requirement of the Surface Mining Control and Reclamation Act and its implementing regulations and

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPROXIMATE ORIGINAL CONTOUR--Continued

Generally--Continued

neither that Act nor those regulations provide authority for an evaluation of comparative environmental harm from eliminating highwall exposures or allowing such exposures to remain.

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14 that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

The responsibility of a surface coal mine operator to ensure that highwalls created during its mining operations remain covered after backfilling and grading in accordance with 30 CFR 715.14 continues at least for a sufficient period of time to allow the regulatory authority to determine that the highwall has in fact been covered and that the backfill material has been placed and compacted in a manner that properly takes into account the expected settling.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983) 90 I.D. 425

AREAS UNSUITABLE FOR SURFACE COAL MINING

Areas Designated by Congress

"Valid existing rights." To demonstrate "valid existing rights," and thereby avoid a restriction on surface coal mining under sec. 522(e) of the Act and 30 CFR Part 761, the claimant must show that it held property rights on Aug. 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the claimant to produce coal by a surface coal mining operation.

"Valid existing rights." Relevant state law is a proper aid in the interpretation of the terms of the document relied upon to establish "valid existing rights" under sec. 522(e) of the Act and 30 CFR Part 761.

"Valid existing rights." When the document relied upon to establish "valid existing rights" to surface mine coal is a deed which conveys both the mineral and overlying surface estates, authorization to surface mine will be presumed, for the purposes of sec. 522(e) of the Act and 30 CFR 761.5, in the absence of language to the contrary in the conveyance.

"Valid existing rights." A local government's zoning ordinance which contains restrictions on surface coal mining will not be considered to preclude "valid existing rights," under sec. 522(e) of the Act and 30 CFR 761.5, where it is shown that the restrictions of the local ordinance have been preempted by state law.

Ronald W. Johnson, 5 IBSMA 19 (Feb. 4, 1983) 90 I.D. 54

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

BACKFILLING AND GRADING REQUIREMENTS

Highwall Elimination

The complete elimination of highwalls is an absolute requirement of the Surface Mining Control and Reclamation Act and its implementing regulations and neither that Act nor those regulations provide authority for an evaluation of comparative environmental harm from eliminating highwall exposures or allowing such exposures to remain.

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14 that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

The responsibility of a surface coal mine operator to ensure that highwalls created during its mining operations remain covered after backfilling and grading in accordance with 30 CFR 715.14 continues at least for a sufficient period of time to allow the regulatory authority to determine that the highwall has in fact been covered and that the backfill material has been placed and compacted in a manner that properly takes into account the expected settling.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983) 90 I.D. 425

CESSATION ORDERS

Generally

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

CIVIL PENALTIES

Generally

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidated Coal Co., 5 IBSMA 6 (Feb. 2, 1983) 90 I.D. 49

The failure of an Administrative Law Judge to impose a civil penalty simply because the total points assigned to a notice of violation are less than 31 may constitute an abuse of discretion if multiple violations are involved.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Amount

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983)
90 I.L. 49

An Administrative Law Judge in a civil penalty proceeding must determine whether to impose a civil penalty for more than 1 day whenever he finds that the violation under review has not been abated and that the exceptions set forth in 30 CFR 723.15(b)(1) do not apply.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.L. 181

Hearings Procedure

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983)
90 I.L. 49

An Administrative Law Judge in a civil penalty proceeding must determine whether to impose a civil penalty for more than 1 day whenever he finds that the violation under review has not been abated and that the exceptions set forth in 30 CFR 723.15(b)(1) do not apply.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.L. 181

EVIDENCE

Generally

It is error for an Administrative Law Judge to fail to admit evidence of laboratory tests of water quality samples when the permittee challenges that evidence only by asserting that it is hearsay because of a failure to establish the chain of custody of the samples. Such an objection goes to the weight to be given to the evidence, not to its admissibility.

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

HEARINGS

Generally

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes un rebutted, the violation must be sustained.

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HEARINGS--Continued

Notice

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IFIA 27 (Dec. 13, 1983)

Procedure

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

HYDROLOGIC SYSTEM PROTECTION

Generally

30 CFR 715.17(f) is a preventive measure, and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of its requirement.

Amay Coal Co., 74 IBLA 48 (June 28, 1983)

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hatch test showing an acidity reading of 4 or lower, in the absence of evidence that the Hatch test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining there is no disturbance that requires compliance with 30 CFR 715.17(a).

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

INSPECTIONS

Generally

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent danger exists and that the State regulatory authority has failed to take appropriate action.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.L. 496

NOTICES OF VIOLATION

Generally

Under 30 CFR 722.14(a), issuance of a notice of violation is complete only when the notice is either personally served by physical tender to an appropriate person or actually or constructively received by such person in the mails. The mere mailing of the notice

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

does not constitute issuance, even if there has been oral notification to the recipient of its mailing.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983)
90 I.D. 49

Specificity

A notice of violation is reasonably specific and satisfies the requirements of sec. 521(a)(5) of the Act where it clearly describes the practices or circumstances alleged to be in violation of the regulations, accurately identifies the particular regulations allegedly violated by these practices or circumstances, and describes the remedial action required to abate each violation. Where, after the OSM inspector explained the violations and remedial actions to the operator, the operator indicated that he understood each of the violations alleged and remedies required, an allegation on appeal that the notice of violation which met the foregoing requirements nevertheless lacked specificity will not be upheld.

Sam Blankenship, 5 IBSMA 32 (Apr. 26, 1983) 90 I.D. 174

PREVIOUSLY MINED LANDS

Generally

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing an acidity reading of 4 or lower, in the absence of evidence that the Hach test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining there is no disturbance that requires compliance with 30 CFR 715.17(a).

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

PUBLIC HEALTH AND SAFETY

Imminent Danger

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent danger exists and that the State regulatory authority has failed to take appropriate action.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.D. 496

ROADS

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983)
90 I.D. 1

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.D. 181

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

STATE PROGRAM

Generally

Except for decisions on citizens' complaints, to which a different rule applies, an OSM State Director's decision is appealable to the Board under 43 CFR 4.1261 only if the decision states the right of appeal.

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent danger exists and that the State regulatory authority has failed to take appropriate action.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.D. 496

VARIANCES AND EXEMPTIONS

Generally

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

2-Acre

The area of an access and haul road used by more than one coal mine operator is properly attributed, at least in part, to each operator in calculating the extent of the surface area affected by each operator for the purpose of determining whether the operator qualifies for the 2-acre exemption of sec. 528(2) of the Surface Mining Control and Reclamation Act of 1977 and 30 CFR 700.11(b). Where only one operator is using the haul road at the time a notice of violation is issued, the entire road may be properly attributed to that operator.

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983)
90 I.D. 1

The 2-acre exemption applies to "operations," not to "operators"; thus, where a coal mining and reclamation operation affects more than 2 acres, an operator who contracts with the permittee is properly charged with violations on the portion of the operation affected by his activities, even if his activities affect less than 2 acres.

Sam Blankenship, 5 IBSMA 32 (Apr. 26, 1983) 90 I.D. 174

The area of an access and haul road used for more than one coal mine is properly attributed, at least in part, to each mine in calculating the extent of the surface area affected by each mine for the purpose of determining whether it qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b). Where only one operator is using the haul road at the time a notice of violation is issued, the entire length of the road that is used for access and hauling may be properly attributed to that operator's mining activities.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.D. 181

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

2-Acre--Continued

The area of an access and haul road used for more than one coal mine is properly attributed to each mine in calculating the extent of the surface area affected by each mine for the purpose of determining whether the mine qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Kimberly Sue Coal Co., Inc., 74 IBLA 170 (July 13, 1983)

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Discharges from Disturbed Areas

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hatch test showing an acidity reading of 4 or lower, in the absence of evidence that the Hatch test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining there is no disturbance that requires compliance with 30 CFR 715.17(a).

Darmac Coal Co., 74 IBLA 100 (June 30, 1983)

WORDS AND PHRASES

"Dredging." Dredging to recover coal from a lake or river is a surface coal mining operation as defined in the Surface Mining Control and Reclamation Act of 1977. A coal lease application to dredge a river and lake in a national forest is properly rejected where it does not meet the criteria set out in sec. 522(e) of that Act and 43 CFR 3461.1(a) (2) (i).

Brentwood, Inc., 76 IBLA 73 (Sept. 21, 1983)

90 I.D. 421

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14 that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983)

90 I.D. 425

"Valid existing rights." To demonstrate "valid existing rights," and thereby avoid a restriction on surface coal mining under sec. 522(e) of the Act and 30 CFR Part 761, the claimant must show that it held property rights on Aug. 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the claimant to produce coal by a surface coal mining operation.

"Valid existing rights." Relevant state law is a proper aid in the interpretation of the terms of the document relied upon to establish "valid existing rights" under sec. 522(e) of the Act and 30 CFR Part 761.

"Valid existing rights." When the document relied upon to establish "valid existing rights" to surface mine coal is a deed which conveys both the mineral and overlying surface estates, authorization to surface

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

mine will be presumed, for the purposes of sec. 522(e) of the Act and 30 CFR 761.5, in the absence of language to the contrary in the conveyance.

"Valid existing rights." A local government's zoning ordinance which contains restrictions on surface coal mining will not be considered to preclude "valid existing rights," under sec. 522(e) of the Act and 30 CFR 761.5, where it is shown that the restrictions of the local ordinance have been preempted by state law.

Ronald W. Johnson, 5 IESMA 19 (Feb. 4, 1983)

90 I.D. 54

SURFACE RESOURCES ACT

(See also Hearings, Mining Claims--if included in this Index.)

VERIFIED STATEMENT

Acceptance by the Bureau of Land Management of mining claimant's verified statement under sec. 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1976), confirms only those rights to surface resources that the claimants held on July 23, 1955, as defined or limited by other existing law.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)

90 I.D. 550

SURVEYS OF PUBLIC LANDS

(See also Easements, Public Lands--if included in this Index.)

GENERALLY

Locations of corners established by official Government surveys are conclusive, and the corner of a Government subdivision is where the United States survey established it.

Mr. & Mrs. John Koopmans, 70 IBLA 75 (Jan. 11, 1983)

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between a quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the quarter corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Robert J. Wickenden, 73 IBLA 394 (June 15, 1983)

The first step of an independent resurvey is to reestablish the outboundaries of the area to be resurveyed, following the methods of a dependent resurvey. The second step is the segregation of lands embraced in valid claims based on the former approved plat.

Where a protest challenges the declaration of a survey that a corner is lost and the reestablishment of that corner by proportionate measurement, and the record shows that the Bureau of Land Management gave due consideration to evidence tendered to establish the original position of the corner, ELM may properly deny the protest and that decision will be upheld on appeal.

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

where appellant fails to establish error in the decision.

Arthur Millard, Mary Jane Millard, 77 IBLA 66 (Nov. 7, 1983)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. The rules for the restoration of lost corners should not be applied until all available original and collateral evidence has been developed.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Titles, areas, and descriptions should remain unchanged in a typical dependent resurvey.

Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or effect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent survey conducted subsequent to patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

Alice L. Alleson, Frances Alleson, 77 IBLA 106 (Nov. 14, 1983)

In determining whether the original survey corners along a township line were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the recovered township corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the intervening corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

State of Oregon, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983)

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

SURVEYS OF PUBLIC LANDS--Continued

AUTHORITY TO MAKE

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys, and making resurveys to reestablish corners and lines of earlier official surveys.

Mr. & Mrs. John Korrans, 70 IBLA 75 (Jan. 11, 1983)

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

DEPENDENT RESURVEYS

The purpose of a dependent resurvey is to retrace and reestablish lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners.

Locations of corners established by official Government surveys are conclusive, and the corner of a Government subdivision is where the United States survey established it.

Where the reestablishment of a section corner in a resurvey is supported by substantial evidence, a protest asserting improprieties in the survey is properly dismissed and does not necessarily warrant a further investigation of the corner.

Mr. & Mrs. John Korrans, 70 IBLA 75 (Jan. 11, 1983)

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between a quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the quarter corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Where reestablishment of a quarter section corner on a second survey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by hearsay, does not warrant a further survey or investigation of the corner.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Robert J. Wickenden, 73 IBLA 394 (June 15, 1983)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. The rules for the restoration of lost corners should not be applied until all available original and collateral evidence has been developed.

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Titles, areas, and descriptions should remain unchanged in a typical dependent resurvey.

Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or effect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent survey conducted subsequent to patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

Alice L. Alleson, Frances Alleson, 77 IBLA 106 (Nov. 14, 1983)

The purpose of a dependent resurvey is to retrace and reestablish lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners.

In an appeal from a protest timely filed pursuant to 43 CFR 4.450-2 protesting the acceptance of a dependent resurvey the appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Crow Indian Agency, 78 IBLA 7 (Dec. 12, 1983)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

In determining whether the original survey corners along a township line were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the recovered township corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the intervening corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Surveys of the United States, after acceptance, are presumed to be correct and after a long lapse of time from the acceptance, will not be disturbed except upon clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such survey.

Where reestablishment of intervening section corners along a township line in a resurvey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by a differing opinion, does not warrant a further survey or investigation of the location of the questioned corners.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing the protest will be affirmed.

State of Oregon, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983)

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Burton E. Edwards, 78 IBLA 62 (Dec. 13, 1983)

INDEPENDENT RESURVEYS

The first step of an independent resurvey is to reestablish the outboundaries of the area to be resurveyed, following the methods of a dependent resurvey. The second step is the segregation of lands embraced in valid claims based on the former approved plat.

Arthur Millard, Mary Jane Millard, 77 IBLA 66 (Nov. 7, 1983)

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1961, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

TAR SANDS--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Minkler, 71 IBLA 328 (Mar. 23, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

The validity of mining claims located for deposits of tar sand must be established under the general principles of the mining laws, including those related to abandonment and performance of annual assessment work. Congress provided no special recognition of tar sand as a valuable mineral deposit. If tar sand mining claims are found to be placer locations for lode deposits, the owner may apply for conversion to a combined hydrocarbon lease under 30 U.S.C. § 226(k) if the claims are otherwise valid.

Orem Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leaseable

TAR SANDS--Continued

as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand oil and gas leases issued prior to Nov. 16, 1981. A lessee seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

TIMBER SALES AND DISPOSALS

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

A party challenging a decision to harvest timber on the grounds that the lands involved will not regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 26, 1983) 90 I.L. 189

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

TORTS

(See also Appeals, Claims Against the United States, Irrigation Claims--if included in this Index.)

SCOPE OF EMPLOYMENT

Under the doctrine of respondeat superior a corporation is liable for the wrongful acts or omissions of its officers, agents, or employees acting within the scope of their authority or in the course of their employment.

The master/servant relationship and the liability of the master for the acts of the servant are determined by the law of the state in which the act took place. In Idaho, a principal or master can be held

TORTS--Continued

SCOPE OF EMPLOYMENT--Continued

liable for exemplary or punitive damages based on the wrongful acts of its agent only when the agent's acts were authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment, or when the acts have subsequently been ratified with full knowledge of the facts.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

TRESPASS

GENERALLY

Where the Bureau of Land Management has assessed treble damages for a trespass occurring in connection with a contract for sale of sand and gravel and the purchaser offers to produce evidence to show that severance of material not included in the contract of sale was not grossly negligent, contrary to the finding by BLM, a hearing is ordered to afford the purchaser an opportunity to prove facts as claimed.

Sunrise Construction Co., 73 IBLA 185 (May 26, 1983)

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

When appellant does not have a rightful claim to the lands it is occupying, the United States is entitled to a court order directing appellant to remove itself and its possessions from the land and directing that if it does not do so by a specified date, the remaining structures would be deemed abandoned and property of the United States.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(See also Appeals--if included in this Index.)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Generally

The question of attorneys' fees is addressed in sec. 304 of the Act and limits the litigation expenses of attorneys' fees to condemnation proceedings in the Federal District Court, and then only when the court determines a condemnation was unauthorized, the government abandons a condemnation or a property owner brings an action in the nature of inverse condemnation and

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Generally--Continued

obtains an award of compensation. The attorney fees and costs claimed herein do not qualify for reimbursement under the Act.

Uniform Relocation Assistance Appeal of Mr. & Mrs. Robert Valcanoff, 5 CHA 180A (Sept. 28, 1983)

Expenses Incidental to Transfer of Title to the United States

Where certain expenses arising out of the transfer of land to the United States are not provided for as part of the relocation assistance authorized by the Act, they must be provided for as part of the negotiations for the acquisition of the property, or else they must be borne by the seller.

Uniform Relocation Assistance Appeal of Philip M. & Cynthia K. Hcsay, 5 OHA 175 (Sept. 15, 1983)

UNIFORM RELOCATION ASSISTANCE

Generally

Where a Federal payment for the acquisition of a pipeline easement is used to retire an existing mortgage on a residential property, and the owner of the property later decides to place a new mortgage on it, incurring a higher rate of interest, the owner is not entitled to reimbursement under the Act for the difference in interest rates because no actual displacement was involved.

Uniform Relocation Assistance Appeal of H. F. & Leola Cochran, 5 CHA 221 (Nov. 3, 1983)

Moving and Related Expenses

Generally

Reimbursable moving expenses under § 202(a)(1) of the Act and implementing regulations of the Department do not include costs of preparing an application for moving expenses.

Uniform Relocation Assistance Appeal of Gregory F. Kurtz (President), Kurtz Brothers, Inc., 5 CHA 24 (Jan. 20, 1983)

Where a business operation on acquired lands is discontinued rather than relocated the displacees may be reimbursed for actual direct losses of tangible personal property in an amount not to exceed the amount of the reasonable expenses required to relocate such property.

Reimbursement is allowable under the Act and the Department's regulations for reasonable expenses in searching for a replacement business but not for more than \$500 in the absence of circumstances warranting a larger payment.

Uniform Relocation Assistance Appeal of Donald F. Knox & Kenneth A. Knox, 5 OHA 87 (Feb. 9, 1983)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Payment may be made in accordance with 41 CFR 114-50.601(b) for a license to remove rock and boulders from land not acquired by the United States where the license was part of a business located on other real property that is acquired.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harmon, 5 OHA 96 (Feb. 25, 1983)

Where the record evidence shows the claimants have not established their entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Virgil S. Hollis, 5 OHA 104 (Mar. 15, 1983)

The Department may properly require claims forms to be executed as a condition of providing relocation assistance.

Relocation assistance does not include payments for unspecified personal damages resulting from a Federal real property acquisition.

Uniform Relocation Assistance Appeal of Roy Sagar, 5 OHA 143 (Aug. 19, 1983)

A tenant in occupancy of acquired property at the time of its purchase by the United States is eligible for payment of allowable moving costs and related expenses under sec. 202(a) of the Act and implementing regulations of the Department.

Payment is allowable under sec. 202(a)(2) of the Act and the Department's implementing regulations for the reasonable in-place value of tenant-owned improvements on lands acquired by the United States, computed with reference to the remaining useful life of the property and without regard to the length of the term of the lease, where the cost of moving the property is shown to be prohibitive and there is no present market for its sale.

Expenses incurred for additions and improvements to the replacement business property rather than as costs for reestablishment and reconnection of facilities are not reimbursable as actual reasonable expenses incurred in relocating personal property under sec. 202(a)(1) of the Act and the Department's regulations.

Costs of advertising for new students and for an open house reception at the replacement school site are not reimbursable moving expenses under sec. 202(a)(1) of the Act and the Department's regulations.

Reimbursable moving and related expenses under sec. 202(a)(1) of the Act and the Department's regulations include costs for telephone calls to coordinate certain aspects of the move and costs for obtaining copies of a document to meet requirements for operating the displaced business at its replacement location.

Where the claimant has not submitted evidence to establish its entitlement to searching expense benefits in an amount greater than that authorized by the Park

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Service in the decision appealed from, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of the Naguil School of Sculpture, Inc., 5 OHA 148 (Sept. 13, 1983)

Where the record on appeal establishes the claimant's entitlement to payment in an amount larger than that determined by the Park Service to be authorized under sec. 202 of the Act in lieu of actual reasonable expenses that would have been required to relocate an outdoor advertising sign structure from Government-acquired property, the determination of the Park Service will be modified and the larger amount of benefits claimed will be allowed.

Uniform Relocation Assistance Appeal of Whiteco Retrocom, 5 OHA 166 (Sept. 14, 1983)

General allegations of misrepresentation on the part of the Government's agents, without proof, are insufficient to justify reopening the issue of severance damages where the land in question has already been acquired by the Government.

A quitclaim deed is for the precise purpose of releasing or conveying any title, interest, or claim the grantor has in the premises, and a grantor cannot later nullify its effects by claiming that he did not realize its implications at the time he signed it.

Uniform Relocation Assistance Appeal of Donald I. Heffner, 5 OHA 168 (Sept. 15, 1983)

Reasonable self-moving costs are generally limited by the regulations to the costs that would be incurred in a comparable commercial move. There is no authority to pay any greater amount in the absence of special justification.

Theft losses are payable only if incurred in the actual process of moving and only if insurance to cover such losses is not available.

Uniform Relocation Assistance Appeal of Eastern Pennsylvania Lutheran Camp Corp., 5 OHA 201 (Oct. 4, 1983)

Where the costs of a self-move appear reasonable in relation to either commercial moving costs or commercial equipment rental, they may be allowed.

The inability of a displaced business to make use of old stationery may constitute an actual moving expense under 42 U.S.C. § 4622(a)(1) and, therefore, may be compensable to the extent that the loss is deemed reasonable.

Uniform Relocation Assistance Appeal of Lang-Miller, 5 OHA 205 (Oct. 4, 1983)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses

Generally

Payment may not be made in accordance with 41 CFR 114-50.703 absent acquisition of real property or written order to vacate such real property.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harmon, 5 OHA 96 (Feb. 25, 1983)

Fixed Payment(s)

Taking of Business Operation

A fixed payment in lieu of actual reasonable moving and related expenses is properly allowed for the minimum sum of \$2,500, specified in the Act, where the record shows the business was operated at a loss for the 2 taxable years immediately preceding the year in which the United States acquired the property, all else being regular.

Uniform Relocation Assistance Appeal of George E. Karth (President), Ochopee L.P. Gas Co., Inc., 5 OHA 93 (Feb. 14, 1983)

An essential purpose of the fixed payment in lieu of actual moving and related expenses is to compensate a business for the loss of its existing patronage at the acquired site. Where no such patronage is satisfactorily established, denial of the fixed payment is proper.

Uniform Relocation Assistance Appeal of Lang-Miller, 5 OHA 205 (Oct. 4, 1983)

Uniform Relocation Assistance Appeal of Donald H. Travis, 5 OHA 212 (Oct. 21, 1983)

Replacement Housing Payment for Homeowners

Generally

Additional replacement housing supplement benefits will be allowed, within the statutory limitation, where the evidence of record establishes the additional cost of purchasing a comparable replacement dwelling in excess of the cost estimated by the Government.

Uniform Relocation Assistance Appeal of Mr. & Mrs. Robert Valcanoff, 5 OHA 180A (Sept. 28, 1983)

Where the Government takes a 3-year option on a piece of residential property in 1969 and the homeowner relocates the same year and subsequently leases the property prior to the Government's actual acquisition of it in 1972, the tenant and not the homeowner is entitled to whatever replacement housing benefits may be allowable.

Uniform Relocation Assistance Appeal of Henry J. Meyer & Doris A. Meyer, 5 OHA 224 (Nov. 7, 1983)

WATER AND WATER RIGHTS

GENERALLY

The Executive Order of Apr. 17, 1926, reserved the minimum amount of water necessary in springs and waterholes to provide water for the purposes of human and animal consumption. The entire flow of these water sources was not necessarily reserved.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.D. 81

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

Georgene E. Rieck, William L. Rieck, 76 IEIA 45 (Sept. 19, 1983)

STATE LAWS

The right to use water from reserved springs and waterholes for any purpose other than the purposes of human and animal consumption must be obtained pursuant to applicable state law.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.D. 81

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

Georgene E. Rieck, William L. Rieck, 76 IEIA 45 (Sept. 19, 1983)

WATER POLLUTION CONTROL

(See also Environmental Quality, Hearings--if included in this Index.)

FEDERAL WATER POLLUTION CONTROL ACT

The exemption under sec. 404(r) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act - Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I), (June 2, 1983) 90 I.D. 255

WILDERNESS ACT

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness

WILDERNESS ACT--Continued

study area as to deprive them of wilderness characteristics.

Owyhee Cattleman's Ass'n, Idaho Board of Land Comm'rs, Idaho Cattleman's Ass'n, 71 IBLA 4 (Feb. 10, 1983)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

The subjective judgment of BLM as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference where the record discloses BLM's firsthand knowledge of the land within the unit.

Richard J. Leaumont, 71 IBLA 112 (Feb. 28, 1983)

Although boundaries of wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man, configuration of the unit may justify adjustment of the unit boundary on the basis of the outstanding opportunity criteria in certain circumstances. A decision subdividing a unit into three subunits on this basis will be set aside and the case remanded for further consideration where the record fails to reflect analysis of the basis for subdivision.

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding that the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

Timothy O. Kesinger, 72 IBLA 100 (Apr. 14, 1983)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the unit's naturalness qualities and

WILDERNESS ACT--Continued

whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite naturalness or outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusions on these criteria.

Utah Wilderness Ass'n et al., 72 IBLA 125 (Apr. 18, 1983)

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

H. F. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jaca Bros., Inc., 73 IBLA 192 (May 26, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

Wilford Cothern, 76 IBLA 23 (Sept. 8, 1983)

The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of an inventory unit from designation as a wilderness study area and from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Davis Oil Co., 75 IBLA 163 (Aug. 18, 1983)

WILDERNESS ACT--Continued

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club - Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983)

The mere assertion that an area is subject to outside sights and sounds, without evidence that they are both adjacent and so extremely imposing that they cannot be ignored, will not preclude a finding by BLM that the area is natural and offers outstanding opportunities for solitude.

The desirability of managing an area for competing multiple uses, including off-road vehicle use, is properly considered during the study phase of the wilderness review process.

Idaho Trail Machine Ass'n et al., 75 IBLA 256 (Aug. 26, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

WILDERNESS ACT--Continued

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multi-resource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Helms Dodge Corp., 76 IBLA 31 (Sept. 8, 1983)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units for the purpose of determining whether the opportunities are "outstanding"; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or primitive and unconfined type of recreation are entitled to considerable deference.

Michael Huddleston et al., 76 IBLA 116 (Sept. 21, 1983)

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on BLM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

WILDERNESS ACT--Continued

Where there is no evidence that a route has been improved by mechanical means, it will not be considered a road even where it is subject to relatively regular and continuous use and maintenance is unnecessary.

BLM may not properly eliminate an inventory unit from further consideration as a WSA because of the adverse impact on naturalness due to unauthorized construction of post-FLPMA roads, even where ELM concludes that the roads cannot be rehabilitated to a substantially unnoticeable condition.

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

A BLM decision to eliminate an area from further consideration as a WSA will be set aside and the case remanded to ELM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the area has the requisite naturalness and the record does not adequately support BLM's conclusion on that criterion.

Philip Allen, Desert Wilderness Coalition, 77 IBLA 330 (Dec. 5, 1983)

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in Change 3 of the WIH prohibits consideration of the effect of scenic vistas on enhancing opportunities for solitude within an inventory unit, and where such vistas are "so extremely imposing" they cannot be ignored, a decision of BLM declining to designate the unit as a WSA arrived solely on the basis of ignoring these scenic vistas will be reversed.

New Mexico Natural History Institute, 78 IBLA 133 (Dec. 29, 1983)

WILDLIFE REFUGES AND PROJECTS

(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)

GENERALLY

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. M. Yates, 71 IBLA 126 (Mar. 7, 1983)

D. M. Yates, 74 IBLA 23 (June 24, 1983)

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. M. Yates, 74 IBLA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. M. Yates, 74 IBLA 159 (July 12, 1983)

LEASES AND PERMITS

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that ELM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes noncompetitive leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. M. Yates, 73 IBLA 353 (June 14, 1983)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.L. 10

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c) (4) (Supp. V 1981).

Chefarnute, Inc., 75 IBLA 242 (Aug. 24, 1983)

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petrovest, Inc., 76 IBLA 327 (Oct. 19, 1983)

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

WITHDRAWALS AND RESERVATIONS--Continued

AUTHORITY TO MAKE

The President of the United States had, prior to enactment of sec. 704(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2743, 2792, inherent authority to withdraw public lands for public purposes apart from the statutory authority vested in him by the Act of June 25, 1910, and such inherent authority is not subject to the restrictions which attend his statutory authority.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

EFFECT OF

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

Where lands which have been withdrawn from entry and location under the general mining laws by a public land order, in determining the rights of a mining claimant who located claims subsequent to that withdrawal, it is immaterial that the land in question is covered by a prior withdrawal for a different purpose.

Joseph F. Vogler, Doris L. Vogler, Dorel Vogler, 72 IBLA 48 (Apr. 12, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Robert J. King, L. K. Hollenbeck, 72 IBLA 75 (Apr. 12, 1983)

M. Jean Fryan, Michael Rafatich, 76 IBLA 192 (Oct. 6, 1983)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al.,
72 IBLA 88 (Apr. 13, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Notestine, 73 IBLA 268 (June 7, 1983)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was imperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Ean Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Mining claims are properly declared to be void ab initio when it is shown that the master plat in the local Bureau of Land Management office shows that the lands located are within an area withdrawn from mineral entry.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

POWERSITES

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Ronald E. McLean, 77 IBLA 380 (Dec. 7, 1983)

WITHDRAWALS AND RESERVATIONS--ContinuedRECLAMATION WITHDRAWALS

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

SPRINGS AND WATERHOLES

The purpose of reserving land surrounding important springs and waterholes was to prevent monopolization of the surrounding public lands.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.L. 81

STATE SELECTIONS

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

WORDS AND PHRASES

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

"Extension." An extension of a prospecting permit is a prolongation of the term of the previous interest. Accordingly, it commences as of the expiration date of the primary term of the permit.

Asarco, Inc., 70 IBLA 91 (Jan. 11, 1983)

"Notation rule." Under the notation rule, where land is segregated from mineral entry under the general mining laws and that segregation is noted on the official Bureau of Land Management records, mineral location is foreclosed until the record is changed to reflect that the land is no longer segregated.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has

WORDS AND PHRASES--Continued

terminated or expired, so long as the records continue to reflect it as efficacious.

Irvin D. Bird, Jr., 73 IELA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IELA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IELA 261 (Nov. 30, 1983)

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Pracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin D. Christensen, 74 IBLA 239 (July 19, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

Wilford Cothorn, 76 IELA 23 (Sept. 8, 1983)

Edward R. Howe, Fred Buff, Gerald A. Strauss, 76 IELA 27 (Sept. 8, 1983)

Phelps Dodge Corp., 76 IELA 31 (Sept. 8, 1983)

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

In re Lick Gulch Timber Sale, 72 IELA 261 (Apr. 28, 1983) 90 I.L. 189

